

UNITED STATES BANKRUPTCY COURT

DISTRICT OF PUERTO RICO

In Re:) Docket No. 3:17-BK-3283 (LTS)
)
) PROMESA Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
The Commonwealth of)
Puerto Rico, et al.,) September 13, 2018
)
Debtors.)

In Re:)
)
) Docket No. 3:18-CV-1561 (LTS)
Government Development)
Bank, et al.,) PROMESA Title VI
)
Movants.)

OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For The Commonwealth
of Puerto Rico, et al.: Mr. Martin Bienenstock, PHV

For Official Committee
of Unsecured Creditors: Mr. Luc Despins, PHV
Mr. Juan Casillas Ayala, Esq.

1 APPEARANCES, CONTINUED:

2 For Puerto Rico Fiscal
3 Agency and Financial
4 Advisory Authority and
5 the Government

6 Development Bank: Mr. Peter Friedman, PHV
7 Ms. Suzzanne Uhland, PHV

8 For Ad Hoc Retiree
9 Committee: Mr. Robert Gordon, PHV

10 For COFINA Agent: Mr. Joseph Minias, PHV

11 For Financial Guaranty
12 Insurance Company: Mr. Martin Sosland, PHV
13 Ms. Maria Pico, PHV

14 For Siemens
15 Transportation
16 Partnership: Ms. Lady Cumpiano, Esq.

17 For COFINA Senior
18 Bondholders' Coalition: Mr. Susheel Kirpalani, PHV

19 Fee Examiner: Mr. Brady Williamson, PHV
20 Ms. Katherine Stadler, PHV

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2	WITNESSES:	PAGE
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1 San Juan, Puerto Rico

2 September 13, 2018

3 At or about 9:36 AM

4 * * *

5 THE COURT: Again, buenos dias. Good morning and
6 welcome to counsel, parties in interest, and members of the
7 public and press here in San Juan, and those observing here
8 and in New York and the telephonic participants. It is, as
9 always, good to be back in Puerto Rico.

10 I remind you, that consistent with court and judicial
11 conference policies and the Orders that have been issued,
12 there is to be no use of any electronic devices in the
13 courtroom to communicate with any person, source, or outside
14 repository of information, nor to record any part of the
15 proceedings.

16 Thus, all electronic devices must be turned off
17 unless you are using a particular device to take notes or to
18 refer to notes or documents that are already loaded on the
19 device. All audible signals, including vibration features,
20 must be turned off.

21 No recording or retransmission of the hearing is
22 permitted by any person, including but not limited to the
23 parties or the press. Anyone who is observed or otherwise
24 found to have been texting, e-mailing or otherwise
25 communicating with a device from the courtroom during the

1 court proceeding will be subject to sanctions, including but
2 not limited to confiscation of the device and denial of future
3 requests to bring devices into the courtroom.

4 So again, a gracious, warm welcome and good morning
5 to you all. And we will begin today's proceedings with a
6 report from counsel for the Oversight Board.

7 Mr. Bienenstock.

8 MR. BIENENSTOCK: Thank you, Your Honor, and good
9 morning.

10 THE COURT: Good morning.

11 MR. BIENENSTOCK: Martin Bienenstock of Proskauer
12 Rose for the Oversight Board.

13 Your Honor, if it's okay, I'm going to provide the
14 status report somewhat in the reverse order of the issues
15 listed because the components thereof will help me provide the
16 general status, which is the first topic.

17 So I'll start with COFINA. On August 29, 2018, the
18 Oversight Board, AAFAF and COFINA entered into a Plan Support
19 Agreement with creditors of COFINA, including the three
20 monoline insurers and Bonistas del Patio with respect to terms
21 for a COFINA plan of adjustment.

22 Based on the creditors executing the PSA, the Plan
23 Support Agreement, the plan has the support of the holders of
24 all three classes of senior COFINA bond claims and the class
25 of insured junior bonds. The compromise and settlement of the

1 Commonwealth-COFINA dispute reached in principle by the
2 respective Oversight Board agents was the premise or starting
3 point for the Plan Support Agreement and corresponding term
4 sheet and the securities which were designed by the Oversight
5 Board.

6 The parties are in the process of documenting the
7 understanding contained in the term sheet and the Plan Support
8 Agreement in accordance with the terms of the Plan Support
9 Agreement. Unless otherwise extended by the parties, a plan
10 of adjustment, disclosure statement and settlement motion must
11 be filed with this Court by no later than October 15, 2018.

12 The Oversight Board continues to work with other
13 parties not included in the Plan Support Agreement, including
14 the Commonwealth agent, Bank of New York Mellon, and the
15 holder of a claim relating to an outstanding derivative. The
16 Oversight Board hopes, and the parties to the Plan Support
17 Agreement hope, that confirmation of a plan of adjustment can
18 occur as early as December 2018.

19 And to be sure, Your Honor, much of the progress this
20 represents is due to the obviously extremely constructive help
21 and efforts of the judicial mediators.

22 THE COURT: I'm very glad to hear this.

23 MR. BIENENSTOCK: Next, Your Honor, with respect to
24 the debt investigation, on August 28, the Oversight Board
25 created a special investigations committee comprised of four

1 Board members to determine whether to bring any actions, which
2 parties are best positioned to bring them, and the process for
3 doing so based on the Kobre & Kim report and consultation with
4 counsel.

5 The Special Investigations Committee intends to
6 initiate any actions within the two-year anniversary of the
7 Title III petitions, which is largely in May 2019. The
8 Special Investigations Committee will hold a public hearing in
9 San Juan this coming Tuesday, September 18, 2018, which will
10 also be live streamed online to provide more information.

11 The Special Investigations Committee is endeavoring
12 to determine the realistic magnitudes of the potential claims
13 reported by Kobre & Kim, and who has standing to bring them
14 and the best way forward. These are not simple questions, but
15 all deliberate speed is being applied so that the benefits of
16 the report can be realized as efficiently and quickly as
17 possible.

18 THE COURT: And as you know, there have been issues
19 raised throughout these proceedings, and particularly
20 recently, about the unusual statutory structure and
21 composition of the Oversight Board and its range of
22 responsibilities that cross various debtors. And so, are
23 there procedures in place to ensure the appropriate evaluation
24 of these issues from the perspective of each debtor?

25 MR. BIENENSTOCK: Well, in several ways, yes, Your

1 Honor. And that's not to say that -- other steps may be taken
2 as things get more specific, but to start with, the Special
3 Investigations Committee, which is a subset of the Oversight
4 Board members, does not consist of any persons who were
5 formerly associated with the Government Development Bank or
6 other government instrumentalities.

7 In respect of whether these claims might impact or
8 advantage one debtor at the expense of the other, that's
9 something that would clearly be part of the analysis that the
10 Special Investigations Committee is doing.

11 And so Your Honor's concern will clearly be taken
12 into account, but it's -- I can't say now where that comes up
13 and how it would be dealt with, but we're very conscious of
14 it, as the Court obviously is.

15 One of the tricky issues embodied in the report is
16 that based on the PROMESA statute, the Kobre & Kim mandate for
17 its investigation was to find claims. And these claims are
18 not only claims of debtors, but in some cases, claims of
19 individual bondholders or -- now we know, to start, that a
20 parade of different litigations by individual bondholders
21 would be probably the least efficient and most expensive
22 method of having these things resolved.

23 Whether, to the extent claims are meritorious, they
24 can be brought by an Oversight Board, or a debtor, or someone
25 else, or it can only be brought by bondholders is one of the

1 primary issues that the Special Investigations Committee is
2 going to be deliberating, because we have to know who has
3 standing to bring them before we start.

4 THE COURT: Would I be -- I'm sorry. I didn't mean
5 to interrupt.

6 MR. BIENENSTOCK: I'm finished, Your Honor.

7 THE COURT: Would I be correct in assuming that you
8 would be focusing only on claims that would bring value into
9 one or more of the estates, as opposed to claims for which a
10 bondholder would have standing that might be claims that would
11 benefit directly a successful bondholder in their capacity as
12 buyers, rather than benefiting the issuer, governmental
13 entities and their respective estates in Title III?

14 MR. BIENENSTOCK: Well, yes, and a bit more. From
15 the viewpoint of the Special Investigations Committee, I think
16 it's fair to say that they're clearly going to be mindful of
17 which claims move the needle most in favor of adding value to
18 the estates. And that's for both the benefit of the people of
19 Puerto Rico and the creditors of different debtors.

20 There is a second objective, which in some cases, if
21 warranted, and we've made no judgments, for a deterrent
22 effect, if someone did something wrong, we would want to do
23 something about it to show going forward that it should not
24 happen again. So that's separate than how much value would be
25 brought in. Now --

1 THE COURT: And could that include criminal referrals
2 or requests to prosecutorial authorities, if it's deemed
3 appropriate?

4 MR. BIENENSTOCK: Sure. Sure. And clearly that's
5 not something the Oversight Board can do other than refer it
6 and make a request of the government.

7 And then finally, from the -- again, going back to
8 the statute, to the extent that the debtors or the Oversight
9 Board cannot or should not bring certain actions, there still
10 needs to be some light and identification of what actions
11 individual or groups of bondholders may want to bring on their
12 own behalf.

13 THE COURT: And I believe that the last time we were
14 at a hearing, perhaps at the last Omni, there was a
15 representation that the Oversight Board had been privy to all
16 of the information to which Kobre & Kim had access, even such
17 information as is, you know, redacted or obscured or spoken
18 about in a more indirect manner in the report.

19 Am I correct in that?

20 MR. BIENENSTOCK: Your Honor, I would have to check.
21 I -- personally, I know I haven't seen it, but the Board might
22 have access to it.

23 THE COURT: Because there obviously have been
24 concerns raised about the extent to which, the manner in which
25 information was collected by Kobre & Kim. And the manner in

1 which Kobre & Kim speaks of the information gathered and its
2 source is not necessarily useful by or transparent to someone
3 who's only in the position of reading the report.

4 MR. BIENENSTOCK: I think currently we're having
5 discussions with those, such as the committees that want
6 access to all the information. And I expect, you know, those
7 things will be consensually resolved.

8 THE COURT: I'm glad to hear that.

9 MR. BIENENSTOCK: Because we do want to maximize
10 sunshine.

11 THE COURT: I'm very glad to hear that. Thank you.

12 MR. BIENENSTOCK: Thank you.

13 Your Honor, moving on to PREPA, in respect to its
14 cash position as of August 31, 2018, operating cash balances
15 were approximately 299 million, inclusive of 174 million of
16 current borrowings under the Commonwealth loan. The
17 Commonwealth loan converted into a term loan at the end of
18 June 2018, and any additional repayments in the future will
19 permanently reduce the loan balance.

20 PREPA's operational cash receipts currently service
21 the majority of cash expenditures for operations. During the
22 month of August, average weekly cash collections from
23 customers were approximately 65 million. PREPA, therefore,
24 should not require additional financing for operations in the
25 near term.

1 In respect to PREPA operations, PREPA is moving
2 forward with reviewing responses to several RFPs, requests for
3 proposals, for generation for different parts of the island.
4 PREPA continues to run the generation fleet as economically as
5 possible, while keeping in mind the overarching goal of
6 retaining grid resiliency. Actively pursuing different
7 alternatives for generation resources or a conversion to
8 cleaner burning fuels is part of the search process.

9 Power has been restored to over 99.5 percent of
10 customers on the island. Current average weekly generation
11 delivered to the power grid is approximately 95 percent of
12 2017 levels. Approximately 84 percent of 103 larger
13 transmission lines are fully in service.

14 In respect of hurricane preparedness, PREPA's
15 emergency plan was approved during 2018 and has been updated
16 with the most recently available information. The emergency
17 plan is in concert with government policies and based on the
18 same organization responses for all agencies.

19 In addition, PREPA conducted preparedness exercises
20 during the summer and implemented emergency procedures during
21 Tropical Storm Beryl. Fortunately, Tropical Storm Beryl was
22 largely a non-event from a damage perspective. However, it
23 provided an excellent opportunity for PREPA to activate its
24 response plan and debrief the activity.

25 In respect to PREPA RSA status, PREPA, the Oversight

1 Board and AAFAF entered into a preliminary restructuring
2 support agreement with an ad hoc group of uninsured
3 bondholders in July 2018 which contemplated a more
4 comprehensive restructuring support agreement by August 27.

5 The August 27 date has been continued to September
6 14, and we expect additional extensions while we work through
7 various structural issues. To date, we have not reached an
8 agreement with any of the monoline insurers, but discussions
9 are ongoing to accomplish that.

10 In respect to the transformation process, the process
11 to transform the electric sector is proceeding on schedule in
12 accordance with the fiscal plan. Following is a summary of
13 recent and updated milestones.

14 The market sounding process completed on schedule in
15 mid June 2018. The process confirmed there was significant
16 industry interest and provided constructive feedback on how to
17 achieve a successful result. Amendments to the public-private
18 partnership law facilitating the transformation were signed
19 into law in June 2018. The IRP process is proceeding on
20 schedule as well pursuant to the fiscal plan.

21 The P3 Authority, that's the Public-Private
22 Partnership Authority, and PREPA have begun the necessary
23 tasks to move forward with the transformation. Most recently,
24 the P3 Authority retained counsel to help prepare a request
25 for qualifications to solicit qualifications for private

1 operators to enter into a concession arrangement with PREPA to
2 run the transmission and distribution grid.

3 Your Honor, in sum, between COFINA, PREPA, and the
4 GDB Title VI, which I haven't mentioned, but as the Court
5 knows, it will come up in the context of the stay motion,
6 there's a proposed GDB Title VI plan that AAFAF is furthering
7 and soliciting votes for.

8 Between COFINA, PREPA, and the GDB Title VI,
9 restructuring is in firm respect -- is in firm prospect of
10 approximately 40 percent of the 74 billion of bond debt in
11 total. This is progress based on mediation and litigation.

12 Over 70 complaints and motions naming the Oversight
13 Board as a defendant have been filed in this case to date.
14 Twenty-nine requested injunctions against the Oversight Board
15 in six cases against -- requested injunctions enjoining the
16 Oversight Board from negotiating plans of adjustment or
17 certifying fiscal plans.

18 In all those cases, the Oversight Board filed
19 approximately only three motions, putting aside routine fee
20 procedure and lease assumption motions, but three substantive
21 motions. The litigation, whether it commenced by creditors or
22 the Oversight Board, has all contributed toward establishing
23 the rules of the road.

24 And we certainly don't criticize creditors who
25 brought litigation. They have every right to zealously

1 protect their interests and they want to negotiate on a larger
2 pie, which was the logical economical reason for, you know,
3 asking to get involved and influence the fiscal plan process.

4 All of this has contributed to the rules of the road,
5 and to where we are today and being able not only to have the
6 40 percent of the debt -- the bond debt in prospect of being
7 restructured in the very near term, but we're also reaching
8 for the balance of the debt, the largest chunk of which is the
9 GO debt, approximately 18 billion dollars, plus five billion
10 of guaranteed GO debt.

11 Going back to the impetus for a lot of the
12 litigation, which was to influence the fiscal plan, because
13 creditors rationally wanted to negotiate for a larger pie,
14 that has been the objective of the Oversight Board as well;
15 and not only to help creditors, but for the people of Puerto
16 Rico, they also want a larger pie. And they're deserving of
17 it, and that was really the impetus behind the Oversight
18 Board's urging the Governor and the legislature to adopt
19 employment at will. That enlarges the pie greatly.

20 And while it has not been accomplished, we are hoping
21 that the legislature will come around and that it might be
22 accomplished in the future, primarily for the benefit of the
23 people of Puerto Rico, but what helps all the people also
24 helps creditors.

25 So I don't know what the Court was thinking coming up

1 to today, but the progress done both on the fiscal plan and
2 budget, half of the Oversight Board roles and the debt
3 restructuring has been largely under the radar, except when
4 there were litigation issues that surfaced for the Court.

5 Now, I hope and think that the Court and everyone
6 else has a picture that with the help of creditors, the
7 mediators, and the Oversight Board and AAFAF real progress has
8 been made. And we're hoping to finish the job as quickly as
9 possible.

10 THE COURT: Well, Mr. Bienenstock, I appreciate this
11 more comprehensive picture, and I was particularly concerned
12 that as much information about the big picture be brought
13 forward publicly in the context of this courtroom as possible
14 for those who are following these proceedings. And so I thank
15 you --

16 MR. BIENENSTOCK: Thank you.

17 THE COURT: -- both for the progress and for the
18 report.

19 MR. BIENENSTOCK: Thank you, Your Honor.

20 MR. DESPINS: Your Honor.

21 THE COURT: Mr. Despins.

22 MR. DESPINS: Good morning, Your Honor. Can we have
23 a few minutes for what I would call the minority report on
24 what was covered?

25 And by the way, it will not be that long, but I think

1 that it's important for the Court and for parties at interest
2 to understand the Committee's perspective on some of these
3 issues. So let's start with the investigation subcommittee of
4 the Board.

5 THE COURT: Yes, you may speak for a few minutes.

6 MR. DESPINS: I apologize. I should have waited.

7 So the investigation committee of the Board, of
8 course, is the -- are the same Board members that were in
9 charge of the Kobre & Kim investigation.

10 And I want to make sure the Court knows that there
11 was interactive process where we would tell the Board
12 representatives, the Committee would tell the Board
13 representatives, look, we need to look at these issues. They
14 are huge issues that are looming. And you know what? They
15 are, because I've raised them many times in the case.

16 And the response was, hey, we have an investigator.
17 They will look at that and then we'll act appropriately. The
18 problem we have is that the investigator just did not address
19 a bunch of issues. So we were waiting for four, five, six
20 months trying to be constructive, not to jump the gun and not
21 to file objections or to start litigation in the hopes that we
22 would get an answer.

23 And so it's not that we're not happy with the answer.
24 On some topics, there are no answers on big, big, big picture
25 issues. So we are a little bit concerned about that.

1 You raised one issue, which is how does the Board
2 deal with the inter-debtor, and I would expand that it's the
3 part that I'm -- we were really concerned about, in a selfish
4 way, is when there's a conflict between a debtor and a
5 non-debtor. Perfect example, the GDB, because the Board is in
6 charge of GDB and they're in charge of other debtors as well.
7 As far as we know, there is no one really focusing on these
8 issues, and I think GDB is a perfect example of that.

9 So, Your Honor, what we're concerned about also is
10 that, for example, the GDB restructuring was signed up and
11 approved by the Board one year ago. This is when they knew
12 they were going to do an investigation that could have said --
13 and that's not what they said, but could have said all these
14 people should go to jail.

15 Of course, the report didn't say that, but they could
16 have said it in theory. But the Board approved the GDB
17 restructuring which gave releases to all these folks a year
18 before.

19 So we're a bit concerned, when we hear that the Board
20 is going to aggressively pursue this, that what their -- the
21 first act they do before the report is to give releases.
22 After the report --

23 THE COURT: Well, they set up a proposed transaction
24 that would include certain releases. And Mr. Bienenstock has
25 said generally that in all that they are doing, they are

1 considering not only whether -- and I'm paraphrasing here --
2 whether money would be left on the table improperly by virtue
3 of any transaction, and also whether or not the financial
4 impact would be significant to ensure that, you know, conduct
5 that needs light shined on it has light shined on it, and that
6 the authorities are encouraged to pursue anything that the
7 authorities ought to be pursuing in light of what's gone on in
8 the past.

9 Is that a fair paraphrase, Mr. Bienenstock?

10 MR. BIENENSTOCK: Yes, Your Honor.

11 THE COURT: Thank you.

12 MR. DESPINS: And that is -- that is exactly what he
13 said. The problem is, though, that they agreed to these
14 releases a year ago, meaning before they knew the results.

15 THE COURT: They agreed to propose these releases in
16 a transaction that needed disclosures, voting, and ultimately
17 a court proceeding, which has not taken place yet.

18 MR. DESPINS: Correct, but not voting by the party --
19 okay. So now there is a report. And the report says certain
20 things. We -- as you know, you've seen our informative
21 motion, we have various concerns with the report. But in some
22 instances it says, hey, there are issues here. So you would
23 think the Board would say, wait a minute. Hold the -- you
24 know, let's pause, and if we're going to investigate claims,
25 if we're going to pursue claims, we should look at that. But

1 no, we're going full steam ahead with this process.

2 So the Committee, you know, that's a concern that the
3 Committee has and that -- I wanted to make sure that that was
4 expressed to the court.

5 Now, on COFINA --

6 THE COURT: And you have filed an informative motion
7 that details more specifically many of your concerns.

8 MR. DESPINS: Correct, Your Honor.

9 THE COURT: Yes.

10 MR. DESPINS: Next, Your Honor, COFINA, very briefly.
11 Because Judge Dein signed the Order -- I don't know if you saw
12 the joint motion of the two agents to extend the abeyance
13 period?

14 THE COURT: I did.

15 MR. DESPINS: Okay. So I will not repeat everything
16 that's in there, but you saw that there's --

17 THE COURT: Yes.

18 MR. DESPINS: -- obviously a different perspective.

19 THE COURT: Yes.

20 MR. DESPINS: And the Committee, as Commonwealth
21 agent, is really in a holding pattern right now. We
22 understand the Board, they're not bound to do this, but
23 probably will issue a new certified fiscal plan in the next
24 ten days or so.

25 We're hoping that they will resolve this issue for

1 us, but we don't know. And if they don't, obviously,
2 unfortunately it's likely that the Committee -- you know, the
3 Committee has not taken a final decision. But I want to make
4 sure that the Court is aware that the Committee, and I think
5 it applies to the Retirees Committee as well, would not
6 support this and would also challenge the Board's ability to
7 bypass the Committee in that process.

8 THE COURT: Yes. And that was previewed in the
9 extension motion, and I gather contextually from other
10 statements that that is a prospect. And I also gather from
11 your remarks and Mr. Bienenstock's remarks that there are
12 communications and there is work to try to bridge that issue,
13 which may or may not be successful.

14 Fair or no? Not fair?

15 MR. DESPINS: Well, we talk all the time, so let's
16 just be clear about this. Mr. Bienenstock and I talk all the
17 time. But the issue of the fiscal plan, that's determined by
18 the Board itself --

19 THE COURT: Yes.

20 MR. DESPINS: -- and its financial people, so I don't
21 think we've been involved in a back and forth into you should
22 increase this or that. No, we have not. But the concept, the
23 issues we're discussing, yes, I have had plenty of discussions
24 with Mr. Bienenstock over these issues.

25 THE COURT: And you were very clear at the last Omni,

1 I think, about your issue with respect to projections and the
2 size of the pie in relation to the premise of the original
3 Commonwealth-COFINA agreement in principle.

4 MR. DESPINS: Yes. And there's a data point I want
5 to give the Court in closing, which I've never used before,
6 but, you know, the split in COFINA, that's what -- we refer to
7 it as the PSTBA box. It's a set amount over the next 40 years
8 of SUT. And that's being split 56 -- I'm sorry, 53, 46.
9 Forty-six and change for the Commonwealth, and the balance to
10 the COFINA folks.

11 The dollar amounts, we're talking nominal dollars.
12 We have to be careful because nominal dollars can be
13 misleading, but the problem is if we use present value
14 dollars, we get into a fight as to what the discount rate is.
15 But just nominal dollars, that interest in that box of the
16 Commonwealth is less than the amount of the deficit that would
17 apply under the current fiscal plan after COFINA has been
18 paid.

19 So just to grasp this, all of the money that the
20 Commonwealth would be getting under that structure is less
21 than the amount of the deficit that is currently projected.

22 We -- I want to be clear, we would love to have a
23 deal, Your Honor. But that's such a -- this is not an
24 adjustment of a few percentage points. We're talking about
25 the entire consideration being gone.

1 THE COURT: Yes.

2 MR. DESPINS: So I wanted to make sure that data
3 point was there.

4 Thank you, Your Honor.

5 THE COURT: Thank you. Yes, sir.

6 MR. GORDON: Thank you, Your Honor. Good morning.
7 Robert Gordon of Jenner & Block on behalf of the Official
8 Retirees' Committee.

9 THE COURT: Good morning, Mr. Gordon.

10 MR. GORDON: Thank you, Your Honor.

11 I just want to address briefly the comments regarding
12 the status of the COFINA plan of adjustment, if I may, and
13 some concerns that are somewhat similar to what has been
14 expressed on behalf of the Commonwealth agent.

15 Your Honor, when we, the Retirees' Committee, were
16 involved in the negotiations in the spring with the COFINA
17 agent and Commonwealth agent, which negotiations led to the
18 term sheet that was announced on June 5, I certainly expressed
19 along the way concerns about proceeding with a COFINA plan of
20 adjustment that was not linked in some way to a concurrent
21 plan of adjustment for the Commonwealth.

22 It is one thing to focus on a subset of the
23 Commonwealth debt and a subset of these cases to fix items and
24 to reduce the moving parts and open issues in the case. It is
25 quite another thing to then proceed piecemeal toward plans of

1 adjustment.

2 The term sheet that was announced on June 5 was based
3 upon a May 30 certified fiscal plan and the projections
4 thereunder as to cash flow and surpluses. As the Court knows,
5 in late June, the Oversight Board then certified a new fiscal
6 plan that dramatically reduced projections of cash flow and
7 made the COFINA term sheet now appear unaffordable relative to
8 the May 30 fiscal plan.

9 The fact is that the fiscal plan keeps getting
10 revised and in very substantial ways. Right now, it is simply
11 a moving target. The concern, Your Honor, that we have is
12 that the Oversight Board could, and I'm not ascribing any
13 nefarious intent at all here, but the Oversight Board could
14 certify a fiscal plan this fall, leading up to a plan of
15 adjustment confirmation hearing for COFINA that appears to
16 leave adequate resources at the Commonwealth, to then propose
17 a Commonwealth plan, notwithstanding the COFINA plan, that
18 provides for the payment of essential services, and the
19 payment of pensions, and the reinvestment in the Commonwealth
20 and so forth. But then, after the COFINA plan has been
21 confirmed, but before a Commonwealth plan has been confirmed,
22 due to new events or new analysis, the Commonwealth fiscal
23 plan is again revised downward, just like it was in June.

24 And then the Court would be facing a situation in
25 which the COFINA bondholders would be saying that their

1 claims -- that their rights have already been set in stone
2 under a confirmed plan, and that if there are inadequate
3 assets at that point, that the Commonwealth creditors and
4 pensioners, and indeed the Commonwealth itself, must suffer
5 the consequences and alone bear the brunt.

6 Put simply, it is hard to understand how a COFINA
7 plan, which can and will have such a significant impact on the
8 Commonwealth, and any plan of adjustment to be proposed for
9 the Commonwealth, can be considered and confirmed in a vacuum
10 in advance of a Commonwealth plan.

11 That doesn't mean I can't be convinced otherwise, but
12 I feel compelled to raise this concern today, Your Honor, and
13 reserve all rights on behalf of the Retirees' Committee.

14 I would also take this opportunity, in the interest
15 of efficiency, to just reference that there is obviously going
16 to be considered today moving forward with the GDB
17 restructuring RSA. And of course the Retirees' Committee has
18 not weighed in on that restructuring for various reasons, but
19 the concerns about a piecemeal process apply there as well and
20 leave us a bit quizzical.

21 It is fairly clear that the GDB restructuring is not
22 an urgent matter. And so the timing seems a bit odd to me.
23 It seems that there is a desire to report progress to this
24 Court, regardless of whether the sequencing of events makes
25 any sense.

1 And I would simply suggest, Your Honor, as the Court
2 knows, there are releases under the proposed restructuring for
3 GDB of various individuals. Again, we have not weighed in on
4 any of that, but I would suggest to Your Honor that at a time
5 when 167,000 retirees of the Commonwealth do not know their
6 fate under an as yet to be proposed Commonwealth plan, it's a
7 bit tone-deaf and unseemly to be pushing forward and devoting
8 resources to pushing forward another deal that benefits
9 certain individuals while the retirees don't know their fate.

10 Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Gordon.

12 Mr. Bienenstock, these are some weighty issues.
13 Would you care to speak further?

14 MR. BIENENSTOCK: Yes. Thank you, Your Honor.
15 Martin Bienenstock from Proskauer Rose for the Oversight
16 Board.

17 Just very briefly, the Oversight Board does expect to
18 certify revised fiscal plans for the Commonwealth, COFINA, UPR
19 by the end of this month, and the process for revising fiscal
20 plans for other instrumentalities such as PREPA and HTA will
21 begin in October.

22 On August 21, the Governor has already submitted
23 draft fiscal plans to which the Oversight Board sent notices
24 of violation, and on September 7, the Governor submitted
25 revised draft fiscal plans.

1 So that process is ongoing and will continue, because
2 that's -- the Oversight Board has said from the outset that it
3 will change fiscal plans to take into account new information
4 and to fix mistakes, and that will always continue.

5 I just want to respond very briefly to Mr. Gordon's
6 comments. First, in respect of the COFINA-Commonwealth deal,
7 the Court will, of course, be able to consider all the pros
8 and cons and arguments when the confirmation hearing is held.
9 And --

10 THE COURT: And there will be a companion 9019 in the
11 Commonwealth case; is that correct?

12 MR. BIENENSTOCK: I'm not certain that's part of the
13 program, but perhaps it could be.

14 THE COURT: I'm sorry. Perhaps I misunderstood. I
15 thought it was.

16 MR. BIENENSTOCK: It could be, Your Honor. I don't
17 want to say for sure. But I think even before that, I think
18 probably if history in other large re-org cases is a guide, at
19 the disclosure hearing, the Court will get a dose of the
20 arguments pro and con.

21 But suffice it to say for now that the notion of how
22 much money will be projected, available to COFINA and to the
23 Commonwealth, which is a moving target and will hopefully
24 improve, but we can't in any way promise or assure that, is
25 only part of the equation.

1 The Court has in front of it dueling summary judgment
2 motions of the two agents. And if the Court decides that, one
3 of the litigants could be a hundred percent happy and the
4 other could be zero percent. And part of this deal is to
5 eliminate the hundred-zero outcome, which would be a disaster
6 for one of the litigants.

7 So I don't want to get more into the pros and cons.
8 The Court will get a lot of that. But it provides, you know,
9 some rationale for why the creditors are participating in the
10 mediation and the Plan Support Agreement, and the Board and
11 AAFAF are moving forward with that deal.

12 As far as the GDB restructuring, which the Court is
13 probably about to hear a lot more about in the context of the
14 Committee's Stay Motion, for the Retirees' Committee to say
15 that the GDB Title VI is being teed up because of a desire to
16 show progress to the Court is a highly irresponsible
17 statement.

18 To provide the Court some of the facts, the GDB
19 restructuring was probably the longest in formation before any
20 of the Title III cases even started. The GDB bondholders were
21 in our offices at the outset of our retention to report on the
22 deals they had already cut with the government.

23 The GDB case involves, on a percentage basis,
24 probably more local bondholders, the Bonistas del Patios, than
25 some of the other cases. And the consummation of a

1 restructuring there, which would provide certainty not only to
2 the bondholders on island, but also a lot of the lending
3 institutions on island also invested in the GDB debt is
4 critical to the Puerto Rico economy.

5 Now, that's not to say that other debtors don't have
6 affairs that are not critical. They obviously are. But to
7 paint GDB as a liquidating entity having no effect on
8 anything, that's being rushed to confirmation, is a completely
9 false picture.

10 It's a lot of money held by locals and involved in
11 the local financial economy, and it could bring down various
12 local banks and other institutions. So in the Board's view,
13 it's at least as critical as any other entity, not
14 withstanding that operationally the Treasury functions that it
15 used to serve are now served by AAFAF.

16 And finally, the fiscal plan, which is being
17 referenced here in the negative because of its lesser debt
18 sustainability due to the absence of employment at will, et
19 cetera, nevertheless still provides the retirees 90 percent on
20 average of their entitlement.

21 And there's something very wrong, Your Honor, with a
22 statutory representative of the retirees being offered 90
23 percent, despite the hardship that we have to wrestle with,
24 and being angry and being -- and telling everybody else, we go
25 first. We need ours in a higher percentage than anyone else

1 is going to get before you should deal with things like GDB,
2 which as I said, are critical to the island.

3 And hopefully we will have more discussions with them
4 and their priorities will get straight; but that was a very
5 unfair shot at AAFAF and the Oversight Board, and I have to
6 respond to it.

7 Thank you, Your Honor.

8 THE COURT: Thank you, Mr. Bienenstock.

9 Mr. Friedman.

10 MR. FRIEDMAN: Peter Friedman from O'Melveny & Myers
11 on behalf of AAFAF and GDB.

12 I echo Mr. Bienenstock's remarks, but want to add one
13 very specific issue, which is that retirees live in
14 municipalities, and one of the major purposes of the GDB
15 restructuring is to help out Puerto Rico's municipalities.

16 So the idea that helping municipalities ought to wait
17 does not make sense, is not appropriate, and is a critical
18 component of the GDB restructuring deal, the Title VI, and the
19 GDB Restructuring Act. It is just not proper to say that
20 relief to municipalities should wait to some long-dated,
21 distant, far out date. It should happen, and it should happen
22 now.

23 Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Friedman.

25 Thank you all for those comments and that

1 interaction. And I look forward to seeing appropriate actions
2 going forward, and I hope, I'll say, resolutions in the sense
3 of people coming closer together, rowing together toward the
4 goal of an appropriate platform for Puerto Rico to go forward
5 in the context of these proceedings.

6 All right. So now, just one moment. I'm sorry. I
7 understand that there are individuals who wish to speak from
8 New York on these issues.

9 Mr. Kirpalani. We're going to switch the camera in a
10 minute. And Mr. Minias.

11 So first, we'll have Mr. Kirpalani -- I'm sorry. Is
12 that Mr. Curtin?

13 MR. MINIAS: Your Honor, I'll be very brief.
14 Joe Minias from Willkie Farr & Gallagher on behalf of the
15 COFINA agent.

16 We obviously disagree with what Mr. Gordon and
17 Mr. Despins said, so we want to make sure the record is clear
18 that we are reserving all rights.

19 Also, so the record is clear, the agreement of
20 principle reached by the agent, there was no direct tie
21 between a COFINA plan and a Commonwealth plan. That was a
22 heavily-negotiated point. I won't go into that further --

23 THE COURT: I need you to speak a little slower and
24 more directly into the microphone, please.

25 MR. MINIAS: Sure.

1 THE COURT: Thank you.

2 MR. MINIAS: Your Honor, just so the record is clear,
3 there was no direct linkage or time in the agreement in
4 principle between the Commonwealth plan and the COFINA plan.
5 That was a heavily-negotiated point. So I want to make sure
6 the record is clear.

7 And we reserve all rights with respect to the
8 statements made by Mr. Gordon and Mr. Despins. We believe
9 that the Plan Support Agreement reached in August was a
10 watershed moment for these cases, and we should begin to
11 proceed forward.

12 THE COURT: Thank you, Mr. Minias.

13 Mr. Kirpalani.

14 MR. KIRPALANI: Good morning, Your Honor. I'll also
15 be brief, and had not planned to say anything, but I told your
16 clerk here in New York that I might be compelled to do so,
17 depending on what the Commonwealth agent and others might say.

18 Suffice it to say that the Commonwealth agent's issue
19 that it's been raising in these informative motions and in ad
20 hoc statements during Omnibus hearings is something that we've
21 thought very hard about responding to formally, and I think
22 what we would prefer is to reserve only these issues certainly
23 until they're properly joined before the Court. But I would
24 point out that the agreement in principle had three conditions
25 to it, none of them related to what would ultimately happen to

1 the Commonwealth's fiscal plan.

2 The issue that's being raised now is really a Monday
3 morning issue, and it's not even something that the
4 Commonwealth agent ever had scope to interfere with. The
5 development of a fiscal plan for the Commonwealth is
6 exclusively within the purview of the Oversight Board, not the
7 Commonwealth agent.

8 And the last thing I'll say, Judge, is that at the
9 end of the day, the Commonwealth agent and the Retirees'
10 Committee's role as a consulting party to the Commonwealth
11 agent are creatures of a stipulation. That stipulation was
12 hard negotiated and signed by a multitude of parties. And one
13 individual signatory's interpretation of that protocol
14 stipulation is not binding on everyone.

15 Also, at the end of the day, the Commonwealth agent,
16 and Your Honor will remember this, pursuant to the
17 stipulation, is a creature of derivative standing. And
18 derivative standing in bankruptcy folklore at the circuit
19 level has its limitations.

20 And we firmly agree with the Oversight Board's
21 position that they should be marching forward for a plan of
22 adjustment for COFINA. They have the statutory authority to
23 do it and they have the votes. And that's on behalf of the
24 COFINA Senior Bondholders Coalition, Your Honor.

25 THE COURT: Thank you, Mr. Kirpalani.

1 I see no further speakers in New York, and so we will
2 now turn to the report from AAFAF.

3 MS. UHLAND: Good morning, Your Honor.

4 THE COURT: Good morning, Ms. Uhland.

5 MS. UHLAND: Suzzanne Uhland of O'Melveny & Myers on
6 behalf of AAFAF and GDB. Just briefly, not to weigh into the
7 last conversations, but I did want to note that the Board is
8 not in charge of GDB, the Oversight Board. They certainly
9 will have a role in connection with the Title VI, but GDB is
10 not in Title III at this point, nor do we intend it to be in
11 Title III.

12 We have issued a press release this morning, so what
13 I'm going to tell you is public and very positive news. We,
14 based on preliminary -- the preliminary information available
15 to AAFAF and GDB, we do have the requisite votes for
16 certification or for qualification of the Title VI.

17 We have, based on this information, 70 percent of
18 outstanding participating bond claims have voted and over 95
19 percent of those have accepted. I would note that the Title
20 VI standards require both an outstanding amount of bonds to
21 vote, and then two-thirds amount of those voting. So it's
22 different than Chapter Nine or Chapter 11.

23 And based on, you know, my experience in Chapter 11,
24 a 70 percent of outstanding participation is an impressive
25 participation level in this type of voting.

1 I would also note that these voting results need to
2 be verified, and then the voting results need to be certified
3 by the Oversight Board as part of this process and that has
4 not yet been done.

5 The accepting votes also included, based on our --
6 the information we have, the vote from BNY Mellon as Trustee
7 for the Puerto Rico Infrastructure Financing Authority Bonds.
8 Those bonds had been supported by an LC from GDB, and earlier
9 this week, they had sought direction from those bondholders.

10 So we can report that that was received and that vote
11 was cast in favor of the Title VI. I'd also like to report
12 that five out of the six municipalities that hold
13 participating bond claims also voted in favor.

14 And finally, with respect to part of the municipal
15 relief that is part of the overall GDB restructuring,
16 municipalities that have certain funds in Excess CAE funds
17 were given the opportunity after the enactment of the
18 legislation to agree to obtain up-front cash of 55 cents on
19 the dollar on those particular deposit accounts, if they enter
20 into an agreement with GDB, and 26 percent -- or 26 of the 30
21 eligible municipalities have already entered into those Excess
22 CAE agreements.

23 And this is, again, part of the overall municipal
24 package, municipal relief package that's incorporated and that
25 Mr. Friedman will discuss more when he comes up to discuss,

1 you know, the GDB Restructuring Act as part of this
2 proceeding.

3 So Your Honor, you know, good news, and we are -- the
4 deadline for voting was last night at 5:00. And so we believe
5 we are -- we will be able to proceed, at least from the voting
6 qualification requirements.

7 THE COURT: That is definitely a good news report on
8 the returns on the voting.

9 MS. UHLAND: Yes. Thank you, Your Honor.

10 THE COURT: I thank you for that.

11 Now, I have some questions and concerns about the
12 form of Proposed Order that was filed on Monday. Are you the
13 person for me to take those up with?

14 MS. UHLAND: Yes. Yes, I am.

15 THE COURT: All right. Did you want to make a
16 further report before I turned to that?

17 MS. UHLAND: Yes, I did. We have been in
18 discussions. We've been -- certain creditor groups ahead of
19 the objection deadline have been reaching out to us with --
20 and we've been in discussions with them about ways to resolve
21 their potential objections through additional clarifications
22 to the Order. So we have been in communication with them.

23 I have not heard back from the Department of Justice
24 since filing this, but we included language verbatim that we
25 had received from them in the Order. So that is part of the

1 process of the Order development.

2 THE COURT: Thank you. The Order -- my overall
3 concern with the Order is that it's very general in language
4 and content and rather conceptual, even though it's proposed
5 to serve also as findings and conclusions.

6 And so to start out with a core concern, the form of
7 Proposed Order is appearing to ask the Court to generally
8 approve what's referred to as the qualifying modification, but
9 that isn't detailed within the Order, nor that I can find by
10 tracing back through cross references and footnotes as to
11 precisely what the Court's being asked to approve.

12 And that's particularly problematic from my
13 perspective, because the government parties are taking the
14 position that Court approval is neither required nor sought
15 for certain elements of the restructuring of GDB, its assets
16 and obligations.

17 And so one way to approach this, and my feeling is
18 that this should be the way, is that there should be a single
19 document that specifies the measures, the transactions, and
20 the documentation for which Court approval is being solicited.

21 And from my point of view, that would be the Proposed
22 Order spelling out precisely the elements of the restructuring
23 transaction that the Court's being asked to approve, the legal
24 determinations that are being sought, and the key factual
25 basis for those legal determinations so that we have a clear

1 record, and the parties and the public understand the scope
2 and the implications of the Court's Order.

3 The September 10th Proposed Order, as I said, speaks
4 in broad terms. It refers to such concepts as judicial notice
5 of arguments and filings.

6 And the proposed findings and conclusions of law
7 don't provide a template that, in my view at this point, is
8 sufficiently indicative of the issues that the parties intend
9 to put before the Court, the standards that the parties will
10 argue apply, or the way in which the parties intend to
11 demonstrate that the standards have been met.

12 And at the risk of going on, I just want to put some,
13 you know, very specific issues out there.

14 MS. UHLAND: Okay.

15 THE COURT: So what is it exactly I'm being asked to
16 approve? What is the qualifying modification as opposed to
17 aspects of the restructuring that I'm not being asked to
18 approve, should we end up with a form of order that's more
19 like a confirmation order, that specifically enumerates the
20 elements of the transaction that I'm being asked to approve?

21 And then, as to the releases issues that have been
22 raised in various ways around here, I would like to know what
23 AAFAF's understanding is of the scope of the term "agents and
24 other representatives" in Article 70 -- 702 of the
25 Restructuring Act; and whether that includes banks and

1 underwriters; and whether there's any daylight between AAFAF's
2 understanding and GDB's understanding on that.

3 And then finally, in this list, whether the Court's
4 being asked to approve any releases of claims by the
5 Commonwealth or any Title III debtor, and where are those
6 proposed releases.

7 MS. UHLAND: Okay. Thank you, Your Honor. We will
8 revise.

9 We had -- you know, given the -- what is Title VI,
10 all of ten pages? You know, we were trying to strike a
11 balance. Would it be presumptuous to have something that
12 looked more like a Chapter 11 Confirmation Order given the --
13 you know, we're all forging a new process here.

14 THE COURT: Yes.

15 MS. UHLAND: So we will take these into -- obviously
16 with this guidance, be able to reformulate the Order. Also --

17 THE COURT: I realize we're all walking in uncharted
18 territory --

19 MS. UHLAND: Yes. Yes.

20 THE COURT: -- but I need to know what I'm
21 approving.

22 MS. UHLAND: We understand.

23 THE COURT: And if there's going to be litigation
24 about it, everybody needs to know what I'm being asked to
25 approve.

1 MS. UHLAND: Yes, Your Honor.

2 And we will then resubmit a Revised Proposed Order,
3 you know, so that the Court has adequate time to review. What
4 would be the timing, would the Court be looking for, for that?

5 THE COURT: Absolutely as soon as possible, since the
6 filing of the Proposed Order was intended to give everybody,
7 including potential objectors and the Court, an idea of what
8 the target is, if you will.

9 MS. UHLAND: Okay.

10 THE COURT: So can you do it within the week?

11 MS. UHLAND: Yes.

12 THE COURT: I prefer Monday, but if you want to go
13 out to next Wednesday or Thursday, I can live with that.

14 MS. UHLAND: Yes, Your Honor. We can deal with
15 that.

16 THE COURT: All right. So today is the 13th. So
17 let's say next Thursday, the 20th.

18 MS. UHLAND: Yes. All right.

19 THE COURT: Thank you.

20 I had a couple of questions related to this for the
21 Oversight Board's counsel as well, you know, given the issues
22 that have been raised in the Title III, and then before we
23 leave this reporting, I wanted to discuss the proposed -- the
24 scheduling proposals that came in yesterday.

25 MS. UHLAND: That's right.

1 THE COURT: And in aid of that, I have questions
2 principally for AAFAF's counsel. So -- but if you don't mind,
3 I'd like to go -- after you've completed, Ms. Uhland, any
4 further remarks you'd like to make, I'd like to go to
5 Mr. Bienenstock and then to Mr. Friedman.

6 MS. UHLAND: Yes. Yes, I'm done, Your Honor. Thank
7 you.

8 THE COURT: Thank you.

9 MR. BIENENSTOCK: Yes, Your Honor.

10 THE COURT: And so Mr. Bienenstock, can you clarify
11 for me the role of the Oversight Board as representative of
12 the Title III debtors in the GDB restructuring transaction?

13 MR. BIENENSTOCK: Sure. The Oversight Board ended
14 up certifying the steps to date in the qualifying modification
15 and supports the trade-offs that were made. So there was a --
16 I assume what Your Honor is referring to is that the
17 municipality and instrumentalities claims were dealt with
18 differently than the bondholder claims.

19 THE COURT: Yes, and the Commonwealth claim itself,
20 and the Commonwealth deposits, as well as the
21 instrumentalities.

22 MR. BIENENSTOCK: First, and again, this gets into
23 our pleading that will go to the next matter, we viewed the
24 Commonwealth, PREPA and HTA really as having liability to GDB
25 as opposed to being entitled to something based on their

1 demand and deposit claims.

2 In HTA's case, their loan liability to GDB dwarfed
3 the demand deposit. In the Commonwealth's case, like by a
4 smaller degree it was dwarfed, but it was nevertheless
5 dwarfed. And in PREPA's case, it had a huge preference
6 liability under Puerto Rico law that was much larger than the
7 demand deposit.

8 So it was really a matter of dealing with their
9 liabilities. And in the -- in the actual deal, although this
10 is not on -- this is not among the headlines, AAFAF was very
11 careful in its negotiation of that deal to control how things
12 can be enforced against the instrumentalities and
13 municipalities.

14 And Mr. Friedman may get into this more later, but
15 suffice it to say they took steps to make sure that these
16 municipalities and instrumentalities could not be brought down
17 by the enforcement of GDB's net claims against them.

18 So overall, the Board thought this was a good deal.
19 It accomplished the objectives necessary for an ongoing
20 Commonwealth, the survival of all of the components, and it
21 was fair to the bondholders as well.

22 THE COURT: And the Oversight Board has the ability,
23 under I guess it's Title II of PROMESA, to review legislation
24 and determine whether the Board considers the legislation
25 consistent with PROMESA.

1 Has the Board made a determination that the 2017 GDB
2 Restructuring Act, in all of its elements, is consistent with
3 PROMESA?

4 MR. BIENENSTOCK: Okay. We haven't -- the Board
5 hasn't issued any formal declaration, but some things are
6 plain. Number one, the Commonwealth and AAFAF formulated the
7 legislation to implement the deal that had been done in
8 principle that we approved.

9 Second, in respect of the releases, which I know are
10 a topic of -- well, they were a topic earlier from Mr. Despina
11 and may come up again, there's going to be some clarification
12 as to what those releases really are at Tuesday's public
13 meeting that goes into the investigative report.

14 Suffice it to say for now that, number one, there is
15 indemnification of officers and directors, and they -- they
16 would not be released in the past for anything, not in good
17 faith.

18 Number two, there was a concern on the part of the
19 UCC at least, and perhaps others, that the phrase in the
20 legislation about releasing agents and representatives would
21 extend to financial institutions and other institutions in
22 addition to people. That will be clarified on Tuesday, and I
23 think it will be clarified in a way that others will have more
24 comfort that claims are not being prematurely released.

25 THE COURT: Thank you. That gets to one of the

1 concerns that I'd wanted to raise with you. And so I hear you
2 that the Board intends, and AAFAF intends to deal with that in
3 the public meeting on the 18th of September?

4 MR. BIENENSTOCK: Yes, Your Honor.

5 THE COURT: And that covers the questions that I had
6 for you at this point.

7 MR. BIENENSTOCK: Thank you.

8 THE COURT: Thank you, Mr. Bienenstock.

9 I am ready to turn to the litigation schedule counter
10 proposals.

11 So Mr. Friedman, could you approach?

12 MR. FRIEDMAN: I'm sorry. Your Honor, did you
13 indicate you had questions for me specifically with respect to
14 that?

15 THE COURT: Well, I had -- I have questions for
16 whoever is willing to talk to me about the prejudice argument
17 being made by GDB in response to Mr. Despins' proposal that we
18 have a limited early Rule 12 motion practice in conjunction
19 with the derivative standing motion that's scheduled to be
20 heard and the standing objection that are scheduled to be
21 heard on October 3rd. So if you're that person --

22 Mr. FRIEDMAN: I think there's a couple of issues,
23 Your Honor. Peter Friedman from O'Melveny & Myers. One is a
24 timing issue. I think it's -- you know, it's certainly
25 jamming us. Second, I think it -- effectively, I think it's,

1 to some extent, wasteful.

2 We'll know what the -- under our proposal, we'll know
3 what the Court says about standing, hopefully after the
4 October 3rd hearing. And then we can decide whether we need
5 to invest resources and, you know, an additional set of
6 briefing or not.

7 I mean, it may well be the Court says to the
8 Committee yes, you have derivative standing, and we don't know
9 what will happen to the Complaint at that point. Maybe it
10 becomes unnecessary, or maybe the Court issues rulings that
11 make it abundantly clear that there is going to be no standing
12 in the other case.

13 I think the other point, Your Honor, is as I read
14 their complaints, I haven't fully formulated my responses, but
15 I think that there are potentially standing issues that go
16 beyond those that have already been articulated. At least two
17 of the accounts, to me, implicate completely separate standing
18 issues.

19 And I have not had a fulsome opportunity to work
20 those out yet, but I think they're there. And I don't want to
21 be prejudiced to, you know, either prematurely put those in
22 play or else have to waive them.

23 So those are my concerns. There are standing issues
24 that are distinct from Title III issues, from the issues that
25 we've briefed already and we'll be briefing next week that

1 relate to specific counts, where I think they just can't
2 establish standing even if they could on other ones, because
3 of flaws in relation to their reading of PROMESA or Chapter
4 Nine.

5 THE COURT: Well, my concern is two rounds of
6 standing issues, you know, particularly if it's two rounds
7 that are variations on the Title III related standing issues.
8 And so my preference would be for, you know, at least the
9 cross-cutting standing issues that are in prospect now and
10 have started to be rehearsed, and will certainly be rehearsed
11 in the papers, to be rolled into that October 3rd event.

12 And as you know, subject matter jurisdiction is never
13 waived, and so that wouldn't preclude, to the extent the
14 adversary proceeding survives this, something with conceptual
15 potential, that wouldn't preclude rolling further subject
16 matter jurisdiction related issues into a 12(c) or summary
17 judgment phase.

18 And my inclination is to have a summary judgment
19 motion phase that follows the merits hearing that isn't
20 layered on top of the merits hearing. So that November 12th
21 time frame, which for me would turn into a November 13th time
22 frame because of the federal court schedule, is acceptable.
23 But I don't want to have a situation where nothing has been
24 dealt with on the threshold standing front at the October 3rd
25 date.

1 And then in thinking about the prejudice concern, I
2 also, you know, looked at the Rule 12 waiver issues, and it
3 seemed to me that the only things that would truly be waived
4 by not raising them in an initial Rule 12 motion would be
5 personal jurisdiction, venue, and process and service of
6 process. And it didn't seem to me that there'd be any serious
7 concerns in those regards.

8 MR. FRIEDMAN: We've accepted service, and we
9 certainly don't contest venue, et cetera. So Your Honor, I
10 understand your ruling. We will modify the schedule
11 accordingly.

12 THE COURT: All right. I have some specific language
13 suggestions, but there is one other thing. On the -- with
14 respect to that second phase, your narrative description of
15 your proposal, as I read it, it indicated that you'd be
16 undertaking not to close an approved Title VI transaction, if
17 I were to approve the transaction, until after a hearing on
18 the summary judgment motion, as opposed to say after a
19 determination on the summary judgment motions.

20 And, you know, frankly, I'm just a little puzzled as
21 to how I could approve the Title VI with open issues about the
22 legality, constitutionality of that Title VI transaction,
23 without that being an advisory opinion. And so I would just
24 like a little bit more insight into why the statement was
25 crafted that way, and whether you have a scenario in mind in

1 which I could approve a Title VI without addressing the merits
2 of claims in the adversary, if I have decided that there is
3 standing to pursue that adversary.

4 MR. FRIEDMAN: You know, Your Honor, our thinking was
5 given the very limited nature of what we intend to seek in
6 Title VI, which we'd spell out if the Court were to conclude,
7 for example, because there were no actual objections to the
8 Title VI, because nobody had standing in the Title VI to
9 pursue an actual objection. That if the Court were
10 comfortable in the absence of any actual Title VI objections,
11 that it were to approve on November 5th or 6th, whatever the
12 date is --

13 THE COURT: The 6th, I think.

14 MR. FRIEDMAN: That there being no objections, it
15 could grant approval, we would go ahead. If the Court
16 obviously has held in abeyance its decision on approving the
17 Title VI until it addresses any adversary proceeding issues,
18 obviously we wouldn't be able to go ahead.

19 Our point was only if the Court were to have approved
20 the Title VI already, we would not otherwise want to be
21 impeded, if the Court could see a way to do that. That's why
22 it was framed that way.

23 If the Court has obviously not approved the Title VI,
24 we can't close the Title VI.

25 THE COURT: Thank you. That was another possibility

1 in my mind, but I wanted to make sure that I understood you.

2 MR. FRIEDMAN: Okay.

3 THE COURT: And so I worked with -- since I don't
4 think you had proposed order language that covered that second
5 summary judgment phase, I worked with Mr. Despins'
6 submissions.

7 MR. FRIEDMAN: Okay.

8 THE COURT: And so do you have Mr. Despins' document
9 127-4 in front of you, which is the --

10 MR. FRIEDMAN: I don't, Your Honor.

11 THE COURT: Okay. All right. So let me just tell
12 you conceptually, you all were supposed to come prepared.

13 MR. DESPINS: It happened while I was on the flight
14 here, so I apologize, Your Honor.

15 THE COURT: All right. Actually, what might be
16 helpful here, I've got these handy dandy books of documents,
17 if you'll bear with me for a minute -- no, actually, the handy
18 dandy book doesn't have it either.

19 Okay. So he has broken it up into two Orders, one of
20 which is just the procedures Order, and the other is the Order
21 relating to the derivative standing and other adversary
22 related matters. So --

23 MR. FRIEDMAN: Your Honor, may I have permission to
24 retrieve my electronic device, which is not connected to the
25 internet, but does have a downloaded copy of the schedule?

1 THE COURT: Yes, please do.

2 MR. FRIEDMAN: Thank you, Your Honor.

3 THE COURT: And if you do have a connection and need
4 to download filing 127, you have my permission to do that.

5 MR. FRIEDMAN: I don't. But thank you, Your Honor.

6 THE COURT: Mr. Despins.

7 MR. DESPINS: So we can access the internet to do
8 that?

9 THE COURT: Yes.

10 MR. DESPINS: Thank you.

11 MR. FRIEDMAN: So, Your Honor, the derivative
12 standing motion -- okay. Sorry, Your Honor.

13 THE COURT: We could print out copies for you. So
14 I'm going to ask Ms. Tacoronte to print document 127-4, which
15 is Exhibit D to 127, and print 127-2, which is Exhibit B.
16 These are the blackline versions, because it was just easier
17 for me to work with those.

18 So if you would print two copies of each of those,
19 that would be great.

20 COURTROOM DEPUTY: Just bear with me for a second,
21 Your Honor.

22 THE COURT: Thank you.

23 MR. FRIEDMAN: Your Honor, if it makes it easier,
24 just looking here, we can just accept the UCC's proposal in
25 total, if that's fine --

1 THE COURT: I had some tweaks on the UCC's
2 proposal.

3 MR. FRIEDMAN: -- okay, from our end.

4 THE COURT: I'm glad to hear that, and they're not
5 extensive. And I think -- well, so let me, since you have it
6 there electronically, this is actually language in 127-4 that
7 is picked up from the AAFAF proposal, paragraphs two and
8 three. It's just the continuation, adjournment language that
9 I had a concern about where in paragraphs two and three, it
10 says that the hearings, the standing hearing and the
11 qualifying modification approval hearing can be continued at
12 any time by the Court or GDB or AAFAF without further notice.

13 Since things are moving so quickly, I want a motion
14 for a continuance. So I would say, "Can be continued from
15 time to time by the Court," cross out "GDB or AAFAF," "without
16 further notice other than adjournments announced in open court
17 or Orders entered on the case docket." And cross out the
18 ability to adjourn by just putting it in an agenda.

19 MR. FRIEDMAN: Okay. I apologize, Your Honor. I
20 will probably have to get a transcript in order to get all of
21 that down correctly. I'm just not fast enough to have
22 transcribed all that. I apologize.

23 THE COURT: That's fine. And you do have a print-out
24 there next to you, if that's easier for you to follow along
25 with. But the transcript will be prepared promptly, as

1 always, so that's fine.

2 And you'd need to make a parallel change in the
3 hearing notice. That's Exhibit B, I think, because that has
4 that same sort of language.

5 So that would be paragraphs two and three of 127-4,
6 the parallel language in the hearing notice, which is 128-1,
7 and also the parallel language in 127-2, which is the standing
8 motion and adversary complaint schedule, and that's paragraph
9 one of 127-2.

10 So going on with 127-4 -- actually, there's nothing
11 else in 127-4. Then 127-2, which addresses rolling in the
12 12(b)(1) motion. The first thing is I think it makes sense,
13 since this deals with scheduling for the adversary, to add the
14 adversary complaint caption as well so it can be filed in both
15 cases.

16 And then as I said, in paragraph one, the adjournment
17 language should be consistent across all of the Orders. And I
18 think we should have a reply deadline. And what I would be
19 comfortable with is October 1, which is a Monday, at 5:00 PM,
20 Atlantic Standard Time.

21 MR. FRIEDMAN: Thank you, Your Honor.

22 THE COURT: And so I suggest adding that to paragraph
23 three.

24 MR. FRIEDMAN: Yes, Your Honor.

25 THE COURT: But that would be the deadline.

1 And the hearing will be in New York on November 13th,
2 which is a Tuesday, at 11:00 AM, Atlantic Standard Time, which
3 will by then be 10:00 AM New York time because the time
4 changes, I think, in early November.

5 And there's adjournment language at the end of
6 paragraph five that needs to be conformed as well.

7 And in paragraph six, I suggest adding after -- in
8 the second line of that paragraph, after the words, "For any
9 party to," the words, "make any FRCP 12(c) motion and/or move
10 for summary judgment." So you can back -- clean up there and
11 anything that's drafted to the complaint --

12 MR. FRIEDMAN: Thank you, Your Honor. And would it
13 be acceptable if we said 7012?

14 THE COURT: I'm sorry.

15 MR. FRIEDMAN: Bankruptcy Rule 7012 or FRCP 12 in
16 that paragraph --

17 THE COURT: Well, one subsumes the other. I've been
18 getting a lot of arguments and pleadings, and adversaries have
19 just referred to the Rules of Civil Procedure. So whatever
20 you want in that regard is fine.

21 MR. FRIEDMAN: Okay. Thank you.

22 THE COURT: And then because we are in paragraph
23 seven, because we are going back to the later hearing date,
24 the response deadline should be October 24th instead of 22nd,
25 which is what Mr. Despina had proposed in connection with the

1 more accelerated scheduling proposal.

2 And the Reply can be November 7th, rather than
3 October 30th. If you all want to agree to earlier dates, as
4 long as I still get to November 13th for the hearing, that's
5 fine.

6 MR. FRIEDMAN: Okay. That will work for me.

7 THE COURT: And those are my line edits. Thank you
8 for your patience.

9 MR. FRIEDMAN: Thank you, Your Honor. We'll mark it
10 all up.

11 THE COURT: Mr. Despins.

12 MR. DESPINS: There was a colloquy between
13 Mr. Friedman and the Court regarding the GDB Title VI
14 proceeding being approved before the hearing on the 13th. So
15 I'm not sure where that landed in the sense of that -- as Your
16 Honor questioned, I'm not sure how it's possible to approve it
17 when there's a lawsuit saying that it's illegal. So I --

18 THE COURT: Well, that was the -- that is the
19 question that I raised with Mr. Friedman. And Mr. Friedman's
20 answer, I think, boiled down to, well, if the Court thinks
21 there's a way to do it, and the Court would be comfortable
22 with issuing that approval, then -- and the Court actually
23 issues the approval, they would go ahead.

24 I think I've made it clear that I, sitting here
25 today, don't really see that as a scenario that could come to

1 fruition if the adversary proceeding is still alive at that
2 point.

3 MR. DESPINS: Understood. I just didn't want my
4 silence to be read as agreeing to that. Thank you, Your
5 Honor.

6 THE COURT: All right. Thank you both.

7 And so now we come to the fee examiner's motion to
8 impose the presumptive standards as modified by the
9 informative or certification of documents.

10 MS. STADLER: Good morning, Your Honor.

11 THE COURT: Good morning, Ms. Stadler.

12 MS. STADLER: Judge, as you know, at the June 6th
13 Omnibus hearing, we discussed the possibility of imposing
14 certain presumptions to, in effect, place professionals on
15 notice or more formal notice of the reasonableness standards
16 that the fee examiner has been applying to interim fee
17 applications reviewed to date, and that will continue to apply
18 to his evaluation of the fee requests going forward.

19 We developed the list of presumption based on
20 standards that the fee examiner already has been applying in
21 his analysis, and we consulted with the professionals before
22 filing the motion in August.

23 After circulating a draft of the motion, we did have
24 back and forth with a number of professionals and made certain
25 changes to the Proposed Order before filing the motion.

1 Nonetheless, after the motion was filed, some professionals
2 voiced additional and formal objections to the form of Order
3 originally submitted, and we engaged again in fairly extensive
4 discussions regarding revisions to the Order that everyone
5 could live with.

6 We take seriously the Court's admonition in the Case
7 Management Order, that matters be resolved consensually
8 whenever possible, so we were trying to do that. The primary
9 objections we received, although objecting parties can
10 certainly articulate them for themselves.

11 But just for context, the primary objections appear
12 to be related to what professionals characterized as the
13 advisory nature of the order. The fee examiner doesn't share
14 that view. We don't view the relief requested as any
15 different from any procedural administrative order.

16 Nonetheless, we wanted to be accommodating and
17 consistent with the law, and so we tried to make changes to
18 the Order that addressed that concern. Obviously no ruling is
19 made until a fee application has been filed, an objection has
20 been raised, issue joined, and an appropriate hearing or
21 briefing of the issue, and then a ruling on that issue from
22 the Court. And that, of course, would be the process with or
23 without this presumptive standard Order.

24 Again, the purpose of the Order is to more clearly
25 articulate than in informal communications or memos to the

1 professionals what the expectations are and the baseline
2 standards will be. And also to allow the public to know what
3 standards are being applied by the fee examiner, and to have
4 some confidence that departures from those standards will need
5 to be justified and explained thoroughly.

6 The revisions then in the Order that we submitted as
7 a redline are our effort to balance these two considerations,
8 the professionals' concerns with the advisory purpose or the
9 notification purpose of the motion.

10 We think the compromise Order that we submitted
11 fairly places everyone on notice, while also recognizing that
12 the judgment about reasonableness of any fee is certainly not
13 made by this Order. It is ultimately made only by the Court
14 after an application has been filed.

15 And of course, the filing or the -- the filing of an
16 objection to a fee application creates a contested matter,
17 which then affords all of the procedural protections that
18 parties are accustomed to in litigation. So we are fairly
19 confident that that process is adequate to address the
20 advisory concerns of the professionals.

21 So with that, I will end my remarks. I'm happy to
22 answer any questions about the Order, the motion, or anything
23 else fee related.

24 THE COURT: Thank you for those remarks and that
25 context. I do have a couple of questions. One was triggered

1 in particular by the change in the iteration or
2 characterization of the presumptions in the certification.

3 And so, in the revision, the language regarding
4 introduction of presumptions is changed to characterize the
5 presumptions as standards that have been employed from the
6 outset. And I understand now that you are seeking to respond
7 to the sort of advisory opinion concerns --

8 MS. STADLER: Right.

9 THE COURT: -- that had been articulated. For me, it
10 raised the question of to what extent, then, do these
11 presumptions represent change, and have the principles already
12 been implemented in a robust fashion? To what extent can I
13 expect to see further economies in billing practices and a
14 reduction of the magnitude of fees billed going forward as a
15 result of entry of this Order? Or should I be reading entry
16 of this Order as revised to say it's going to look the way
17 it's been looking?

18 MS. STADLER: Yes. And you're talking about
19 paragraph two?

20 THE COURT: Yes, I believe so.

21 MS. STADLER: Okay. So the specific concern that
22 was articulated to us on paragraph two is related to the
23 advisory concern, but it was more particularly articulated as
24 a concern about retrospective application and all of the
25 procedural evils that follow from that.

1 In our discussions, in our reports to the Court, in
2 our letter reports to the professionals, we've been very clear
3 about articulating standards, many of which are outlined here,
4 some of which are standards that we have internally applied,
5 without particularly articulating.

6 I'll give you an example, because I think it will be
7 helpful for the professionals and for Your Honor to understand
8 the way the process has been working and will work going
9 forward, assuming the entry of this or some form of Order.

10 One issue that is frequently discussed in the context
11 of professional fees in Chapter 11 cases is the issue of to
12 what extent are the professionals' attempts to justify the
13 reasonableness of their fees compensable.

14 The fee examiner has always taken the position that
15 when we articulate fee examiner standards at the outset of the
16 case, professionals are expected to submit fee applications
17 that comply with those standards, and if they deviate from
18 those standards, they need to include in their fee application
19 an explanation of the deviation from the standard.

20 Notwithstanding that hope, sometimes professionals
21 submit fee applications that don't explain deviations from the
22 articulated standards, which necessitates then the fee
23 examiner having to raise that issue, either informally or in a
24 report, the professional having to spend time gathering
25 information to respond, and often lots of time talking on the

1 | phone and arguing about whether the explanation is or is not
2 | sufficient.

3 | The purpose of that mode of operation for us is to
4 | ensure that to the extent we are imposing a burden on the
5 | professionals with respect to their fee applications, they are
6 | entitled to be compensated for that in connection with the
7 | preparation and submission of their fee application, as the
8 | Code requires.

9 | Beyond that, we view it as a failure to appropriately
10 | document or appropriately submit an application that addresses
11 | the reasonableness criteria, and that the burden, the
12 | financial burden then should be on the professionals
13 | themselves of remedying deficiencies or defects in their
14 | initial submissions.

15 | That concept, that principle is not new to the fee
16 | examiner or probably fee examiners in any other Chapter 11
17 | case where there is one. It's obviously been litigated. It's
18 | been litigated in the Supreme Court. And everyone has their
19 | own views upon that issue. But the fee examiner's views are
20 | well-established, have been articulated to the professionals,
21 | and have been applied since the outset.

22 | Now, the fee period that we're looking at right now
23 | covers the period of time when we first began our work. So
24 | this third interim fee period, which covers February through
25 | May, includes the time these professionals spent talking to me

1 and to Mr. Williamson and all of our colleagues about our
2 letter reports and fee issues.

3 So we have, in the reports that are drafted and ready
4 to go, raised this issue with respect to many professionals.
5 That was the case before we made this motion. It would be the
6 case in the absence of this motion, and in the absence of an
7 Order. And it would be the fee examiner's position if --
8 hopefully not, but if the issue were to be litigated in this
9 Court.

10 We don't view that as a retrospective application of
11 a standard. We view that as articulating the standard that
12 has always been applied. You won't -- Your Honor won't be
13 able on that particular issue to say, is this new, is this
14 more strict, because we didn't have this category of fees in
15 the first two fee applications.

16 Now, to the extent there are issues that did arise in
17 the first two fee applications, for example, hearing or
18 meeting attendance being two of the most contentious, we have
19 applied the standard articulated here.

20 With respect to hearings, it has always been the
21 speaker, a supporting person, and then nonspeakers need to be
22 monitoring intermittently by phone or not going at all. And
23 we have departed from that standard, as you can imagine, in
24 many, many cases.

25 Obviously the Oversight Board is very uniquely

1 | situated as the representative of the debtors in these cases
2 | for certain matters. AAFAF similarly is very uniquely
3 | situated, given its role and the relationship between it and
4 | the Oversight Board under PROMESA.

5 | And there is obviously not one standard that is going
6 | to be reasonable both in the context of a debtor participant,
7 | like those two entities versus a single issue constituency,
8 | for example, like the COFINA agent. So you will not see
9 | drastic reductions that wouldn't have been in place before,
10 | but what I would say is as the case has gone on, as the
11 | professionals have been given the opportunity to sort of
12 | absorb and work with these standards, that they will
13 | themselves begin to conform their behavior to the standards so
14 | that we don't have to get to the point of arguing about them
15 | in a fee application.

16 | I think I've only been to three of these hearings,
17 | but I think there are fewer people in here today than there
18 | were in June, and fewer in June than there were in March. And
19 | I like to think that that is the result, in part, of the
20 | prophylactic effect of these rulings.

21 | And if it works that way, and I hope it does, we
22 | believe it does, if it works that way, you won't see anything
23 | different. In fact, you might see fewer deductions in the fee
24 | applications that are coming before you, because Your Honor
25 | will obviously not have been asked to approve those fees in

1 the first place.

2 So I know that's not a very clear answer to your
3 question. I think if I had to characterize it, I would say we
4 are going to put the pressure on a little bit more. We are
5 going to tighten the belts a little bit more.

6 We're going to expect more accountability from these
7 professionals. We're going to expect them to do a good job of
8 articulating why they need to be using the resources that
9 they're using, and that we're going to be fairly meticulous in
10 our application of the standard.

11 What that yields in the way of interim compensation
12 Orders and ultimately final compensation Orders remains to be
13 seen, but our hope is that either prophylactically or actively
14 the impact will be a lessening in duplication, waste, excess
15 in the professional fee realm.

16 THE COURT: Thank you for that clarification and
17 reassurance. As you know, it's not only the Court, but the
18 public who are looking very carefully at what's being spent
19 here.

20 MS. STADLER: Yes.

21 THE COURT: And it needs to be clear that the
22 expenditures are necessary and appropriate.

23 I did have a couple of additional clarification type
24 questions. As I read paragraph 2-B, and this was not changed
25 in the certification revision, but it seems to make an

1 effective floor of two timekeepers per issue or motion, since
2 it says a speaker with significant responsibilities, plus one
3 additional timekeeper per speaker.

4 And so my question is whether that's intended and if
5 so, why are you convinced that that's necessary as a floor?

6 MS. STADLER: Right. Well, again, recognizing that
7 there are different types of professionals participating in
8 this proceeding, for a professional that's standing in the
9 shoes of a debtor for any given issue, the fee examiner
10 recognizes that questions, issues can be fine.

11 This morning we had an example of that with a
12 recently filed document and, you know, needing to make copies
13 and that sort of thing. We view that in that situation, it
14 would be reasonable for a second person to be with the primary
15 speaker, to provide a support role.

16 We hope that that would be someone at a much lower
17 billing rate. We hope it would be a paralegal or, you know, a
18 very junior associate, if necessary at all. But there are
19 situations where we go back and look at a transcript and
20 think, wow, this attorney could not have performed the way he
21 or she performed in that transcript without having someone
22 sitting there helping them. And it's not fair to penalize him
23 or her for that. So that's where the standard comes from.

24 Now, we have said to other professionals and in the
25 process of reporting on fee applications, we have raised the

1 issue that not everybody who speaks needs a helper. If I
2 stand up and make an appearance and sit down, question whether
3 I need to be here, much less whether I need to have a helper.

4 So every application of these principles, every
5 application of these standards is going to be framed by the
6 procedural context of the proceeding at issue.

7 And so it is not designed to say you may bring two
8 people to every hearing or every issue that comes up. It's
9 designed to articulate the principle that I just did, that
10 there are some issues that are so significant and weighty that
11 it is simply unreasonable not to allow additional support in
12 the courtroom.

13 We think there are a lot more instances where there
14 are people here for just in case, or backup, or what if this
15 comes up, and we think there are more appropriate ways to deal
16 with those kind concerns than packing the courtroom. But
17 there are certainly situations where professionals need to
18 have more than one person to handle a large, complex
19 proceeding, lots of issues, lots of exhibits, for example, and
20 we don't want to preclude professionals from being encouraged
21 to adequately staff their cases so that they can operate
22 efficiently in here and not waste everyone's time when they're
23 in the courtroom.

24 So again, it's a balancing.

25 THE COURT: So it's a floor where it's objectively

1 necessary, and it's understood that where it's not objectively
2 necessary, it's not a guarantee of compensability of two
3 people per issue or speaker?

4 MS. STADLER: Yes, that is correct.

5 THE COURT: Thank you for clarifying that.

6 And the last question goes to something that we had
7 discussed at the July Omni, but was not reflected in the
8 motion, and so I just want to follow up on that. And that is
9 that there had been some concerns raised regarding billing for
10 electronic research.

11 And so I notice that there wasn't a proposal or
12 effort to create some sort of template or principle for that,
13 where there are flat fee contracts but billing by the hour.
14 Are you comfortable that you have a handle on that with the
15 timekeepers?

16 MS. STADLER: I would say we are comfortable with
17 that. We have seen a significant dropoff in the legal
18 research bills. I think either miraculously, there have been
19 fewer novel legal issues or people have been utilizing
20 resources when they can.

21 And so the dollar amounts for this issue in the first
22 interim fee period were much in excess of the dollar amounts
23 that we're seeing in the third interim fee period.

24 The other issue with that is we have had difficulty
25 with the electronic research providers and them having some

1 | proprietary protection to their pricing issues. So we have
2 | really never been able to verify what this costs a law firm.

3 | Now, whether right or wrong, given the -- our
4 | perception that people have reigned it in in this area, it's
5 | not worth our fighting with Westlaw or Lexus over their
6 | proprietary pricing information, or serving discovery on
7 | professionals and making them disclose it. We don't think
8 | that's necessary.

9 | When an application comes through that has a legal
10 | research bill that raises eyebrows, we raise it. And most
11 | often what we get in response is an explanation of the legal
12 | research, why the person who was doing the research was doing
13 | that research as opposed to someone else cheaper, and, you
14 | know, why that particular issue needed to be researched in a
15 | fee-for-service setting as opposed to on Findlaw.com.

16 | And we have been very successful in, I think,
17 | satisfying ourselves that the professionals are using those
18 | resources judiciously and didn't see a need to put that or
19 | other expense presumptions in the memorandum. But it's
20 | certainly, as with everything else, an expectation that
21 | economies will be observed and that expensive research tools
22 | will be used only when necessary.

23 | THE COURT: Thank you. I have no further questions.

24 | I understand that Mr. Williamson had requested a
25 | speaking phone line, which has been provided. So did

1 Mr. Williamson wish to speak before I rule on the motion?

2 MS. STADLER: Well, that's the problem.

3 MR. WILLIAMSON: No, Your Honor. Ms. Stadler covered
4 all the points quite well.

5 THE COURT: Thank you, Mr. Williamson.

6 And so for the reasons set forth in the original
7 submission and the fee examiner's certification, as augmented
8 and clarified on the record today, the fee examiner's motion
9 is granted, and the Court will enter the revised Proposed
10 Order which was filed as Exhibit A to docket entry number
11 3849.

12 Thank you, Ms. Stadler.

13 MS. STADLER: Thank you.

14 THE COURT: And so we have the contested matter on
15 the agenda. I suggest that we take a ten-minute break and
16 then reconvene for that argument. So let's be back in place
17 at 11:35 by the courtroom clock. Thank you.

18 (At 11:22 AM, recess taken.)

19 (At 11:38 AM, proceedings reconvened.)

20 THE COURT: The next agenda item is the contested
21 motion of the Creditors' Committee to enforce the automatic
22 stay and the Court's June 29, 2017, Order. That's ECF docket
23 entry number 3797.

24 And Mr. Despins, will you and Mr. Sosland still be
25 splitting the first segment?

1 MR. DESPINS: No.

2 THE COURT: So please bring me up to speed.

3 MR. DESPINS: Yes, Your Honor.

4 Things move very fast in these cases. But I think --
5 Mr. Sosland will speak for himself, but I don't think he is
6 pursuing his objection anymore.

7 THE COURT: You'll have to be near a microphone,
8 Mr. Sosland.

9 MR. SOSLAND: Your Honor, this morning FGIC's
10 participation in the motion filed by the UCC was resolved
11 after discussions with AAFAF and the Oversight Board.

12 Would you like to address it?

13 MS. UHLAND: Yes.

14 Your Honor, I can confirm. We're going to
15 investigate certain facts related to this, and our intent is
16 to enter into an arrangement based on the underlying
17 agreements to preserve the rights that Mr. Sosland's client is
18 concerned about and to hopefully reach an agreement by the
19 November 6th hearing with respect to that.

20 MR. SOSLAND: That's correct, Your Honor.

21 THE COURT: Thank you both.

22 MS. UHLAND: Thank you.

23 MR. DESPINS: Therefore, Your Honor, I have my 20
24 minutes in full back. I will take 14 to start, and then
25 reserve six for rebuttal.

1 THE COURT: Very well. So we'll start you off with
2 14.

3 MR. DESPINS: Okay. The first thing I'd like to say,
4 Your Honor, is that we're not surprised that the creditors
5 voted in favor of the restructuring. They're getting all the
6 assets of the company, so obviously they should and they have
7 voted for the transaction.

8 The first question I want to address -- because you
9 asked me that at the last hearing and I was not as prepared as
10 I should have been, or didn't answer as well as I should have
11 -- is why is the Committee doing this?

12 We're dealing with cases involving billions of
13 dollars, et cetera, et cetera. I will put the releases aside,
14 although I want to address them very briefly, but it's not the
15 main argument. The releases, we believe that it's a billions
16 of dollars issue. And the response you're getting on the
17 release is that, hey, these people have the right to be
18 indemnified.

19 And I know that seemed to resonate with Your Honor at
20 the last hearing. And I want to make sure you know that
21 that's a self-inflicted wound in the sense that these people,
22 one, they have to be in good faith, so there's an assumption
23 they're in good faith. But let's assume they're in good
24 faith, they're entitled to indemnification, that's a
25 pre-bankruptcy claim.

1 So if GDB were in Title III, these people would just
2 be getting pennies on the dollar like everybody else on their
3 indemnification claim, because the claim arises out of the
4 pre-petition transaction.

5 So the Board is saying, hey, they have a right to be
6 indemnified. It could be millions of dollars. But that's
7 within your control, the control of AAFAF and GDB, which has
8 put this entity in Title III. And that will never be an
9 issue.

10 As a matter of fact, you never, never not pursue
11 claims because of indemnification because the people who are
12 indemnified, if they're entitled to indemnification, are
13 getting cents on the dollar in the indemnification claim as
14 opposed to affirmative recovery of millions of dollars that
15 need to be paid in full.

16 And on top of that, Section 510(B) of the Bankruptcy
17 Code subordinates on a mandatory basis all claims for
18 indemnification arising out of securities transactions, for
19 example, bond offerings. So they would get zero on an
20 indemnification claim.

21 So this argument that somehow we're doing this
22 because they have an indemnification claim is really beside
23 the point. So let's focus on dollars and cents.

24 THE COURT: I am going to ask you to slow down just a
25 little bit.

1 MR. DESPINS: It's because that clock is maddeningly
2 --

3 THE COURT: It's just a beautiful green light.
4 What's the problem?

5 MR. DESPINS: Yes, for now it's green.

6 Now, for dollars and cents, why is the Committee
7 doing this? Forgetting about the releases for a second, which
8 we think is a huge issue, if the debtors that we are -- the
9 Committee were treated like the most favorite creditors, the
10 distribution to our debtors would be in the range of 50 to 75
11 million dollars.

12 And I know you might say, I guess we get jaded in
13 this case because we're talking billions here, billions there,
14 but 50 to 75 million dollars is a lot of money. And that's
15 basically the task of the Committee, to protect these 50, 75
16 here, 50, 75 in the next deal. Eventually it gets to real
17 money. And that's why we're doing this, Your Honor, and
18 that's why we think the Committee has acted appropriately in
19 this matter.

20 Now, let me clear some of the underbrush regarding
21 the merits of the motion. The first thing is I think there's
22 little doubt that there is a violation of the stay through the
23 setoff or through the exercise of control. What they're
24 saying is that 303 -- 303, 305 insulate that, or that it's
25 exempt -- it's an exception to the stay under 362(B)(4), but

1 at the end of the day, there's no doubt that a setoff is
2 covered by the stay.

3 THE COURT: Let me -- I want to interrogate that
4 notion a little bit more, because it seems to me that even in
5 a Chapter 11 case, the stay doesn't preclude the debtor from
6 pursuing deals to resolve claims by and against it. Those, of
7 course, have to come before the Court if they're out of the
8 ordinary course of business in a 363 motion, or be rolled into
9 a plan that is submitted for approval or perhaps covered by a
10 9019 motion.

11 But in none of those scenarios do I recall ever
12 seeing or hearing of a debtor filing a motion for relief from
13 the automatic stay in order to be able to negotiate a
14 transaction that's going to ripen into a 363 application or be
15 part of a plan. And similarly, if you have, you know, an
16 affiliated group of companies that have some intra or
17 intercompany obligations, under the theory that these broad
18 provisions of the automatic stay apply to debtor-initiated
19 situations, even debtor-initiated situations or
20 debtor-consented situations, it seems to me the filing of a
21 Chapter 11 petition for a group of companies is potentially
22 violative of the automatic stay, because by -- or if filing a
23 petition where you have a claim against somebody who's already
24 in bankruptcy, you know, how is that so different from the GDB
25 Title VI filing that's looking to modify its relationship with

1 a debtor in bankruptcy?

2 MR. DESPINS: Well, first of all, the GDB
3 Restructuring Act disallows these claims. These are claims
4 that -- there's no doubt that these claims are claims that are
5 asserted by the debtors and they're being disallowed through
6 the Act. And the fact that --

7 THE COURT: That is what the proposal is under GDB.

8 MR. DESPINS: Correct.

9 THE COURT: And there's a question of what they're
10 saying they're doing by legislation, and what they're saying
11 they're doing by the Title VI. But leaving aside for a
12 minute, if it were being done by Title VI, they're queuing up
13 a court process for approval of that.

14 MR. DESPINS: Well, no. That's the point. Their
15 whole structure is that you're not approving what's happening
16 in the GDB restructuring in a Title VI. Unless they've
17 changed their views on that, they're saying it's separate.

18 In Title VI, you only approve -- did people vote
19 properly; did they -- were they solicited properly; was enough
20 time spent what I call checking the boxes? That's all they
21 want you to do.

22 You're not approving in a Title VI, under their
23 theory, the disallowance of claims. The Title III debtors are
24 completely absent from the Title VI the way they structured
25 it.

1 Of course, by approving the Title VI, you are
2 disallowing those claims, because the statute only becomes
3 effective when you sign the Order. But clearly the claims
4 being disallowed here by a statute --

5 THE COURT: By operation of the statute that was
6 enacted by the legislature of the debtor entity, by the
7 Commonwealth, of which the other debtors are
8 instrumentalities, and was approved, consented to, not
9 objected to by the Oversight Board that has PROMESA authority
10 to review legislation.

11 MR. DESPINS: That's true, Your Honor, but these
12 debtors have not consented. The structure they want to
13 describe, Your Honor, is there's been a settlement here.
14 There's been a quid pro quo. These debtors -- there's been no
15 Board meeting of PREPA, of HTA, of ERS and all that approving
16 these transactions. They did that on their -- through the
17 legislation.

18 So this is not a settlement context. There's an Act
19 that disallows these claims. And by the way, it doesn't
20 disallow only the claims of the Title III debtors. It
21 disallows or freezes the claims of a bunch of other entities,
22 about two dozens of them that are all government entities.

23 Now, we don't represent them here. We're not
24 involved with them. But I want to make sure --

25 THE COURT: Constitutionally, does a government at

1 the state or territory level have authority to pass laws that
2 determine and regulate the rights of its subdivisions and
3 instrumentalities, like states and municipalities?

4 MR. DESPINS: They can do that, Your Honor, but
5 that's the whole-- the *Stockton* case where the Court said the
6 state, here the Commonwealth, cannot pass laws that are
7 designed to affect the bankruptcy result, the protection that
8 303 -- that's where we're heading, it's all intertwined, the
9 issues are intertwined, is there to protect.

10 For example, don't shut off the water, or do shut off
11 the water if you don't pay your bills. You need to continue
12 or not continue to pay the pension. These are political
13 decisions that clearly can be done, but a legislature cannot
14 pass a law that says, you know, now we have two sets of
15 creditors here. I want these guys to get more than the other
16 guys. And these entities are in bankruptcy, meaning it's
17 disallowing a claim of the debtor.

18 That, the legislature, cannot do. And that's why
19 it's a bankruptcy -- what they're doing is a bankruptcy
20 statute, Your Honor. So I think the stay itself is being
21 violated. There's no such thing as consenting to the stay,
22 meaning the Second Circuit in -- I forgot the name of the case
23 -- I think it's *Osmoa*, basically says the debtor cannot
24 consent to lift the stay. The Court can do that upon proper
25 application, but the debtor cannot. And to me, there's no

1 doubt that there's a stay violation.

2 Now, the next issue very quickly is 362(B)(4).

3 There's no action or proceeding. So that's very interesting.

4 You can say, well, what about the Title IV? There's not an
5 action or proceeding. But you see, that doesn't fit within
6 our structure, because they're saying in the Title VI, you
7 will not pass upon the setoff. You will not pass upon the
8 disallowance. You're not touching any of that. That's why
9 I'm glad you're asking them to clarify in the Order exactly
10 what you're being asked to approve.

11 So therefore, they cannot argue 362(B)(4), because
12 there's no action or proceeding pending. There's a law that
13 takes away rights of debtors, and that's not exempt by
14 362(B)(4).

15 The *McMullin* case in the First Circuit is very clear
16 that the exception is very narrow. It's assuming there's an
17 action or proceeding, and it applies to actions to punish or
18 to condition the conduct of people. This is purely a
19 financial restructuring.

20 Next, Your Honor, 304(I), same issue. They cannot
21 find refuge in 304(I), because that would imply that the
22 proceeding in -- in Title VI encompasses the whole bowl of
23 wax, and that's not their theory.

24 The other issue is they say the stay protects
25 debtors, not creditors. And Your Honor, that's not true. The

1 cases they cite are cases where a creditor is getting sued and
2 saying, wait a minute, you should move to lift the stay.
3 That's not the issue we're arguing here.

4 We're talking about the creditors as a group being
5 beneficiaries of the stay. That's the *Estano*, Second Circuit
6 decision, and *Suarez*, First Circuit decision.

7 Next, Your Honor, is because -- I want to address
8 this 303, 305. You know, *Stockton* addressed that head on. In
9 *Stockton*, there was a law that said these guys win, one group
10 of creditors win, these other guys don't win essentially.
11 That's the purpose of the law.

12 And the Court said, no, 303 -- in their case, it's
13 903, but the same statute -- does not protect against
14 avoidance action, doesn't protect against financial
15 relationship against the state and its instrumentalities.

16 In 305 -- Your Honor, I think they did consent to
17 305. There was an Order entered by Your Honor in that
18 request. There was no reservation of rights in that Order.

19 The Court has the power to implement and to interpret
20 that Order, and therefore, there's been a clear waiver of 305
21 on that issue only.

22 THE COURT: As Mr. Bienenstock pointed out, the GDB
23 restructuring discussions and work predated the Stay Order in
24 the summer of 2017. And so how -- if this restructuring was
25 in process, was the subject of work at that time, how can I

1 | construe the application for that Stay Order as consent to the
2 | thwarting of this transaction by that Order? That seems kind
3 | of illogical to me.

4 | MR. DESPINS: Because they recertified it in 2018,
5 | twice. So it's been recertified by the Board twice in 2018
6 | after entry of the Stay Order.

7 | THE COURT: But I mean, it was something that they
8 | had in mind to do, so why should I read the Stay Order as
9 | consent to the notion that the automatic stay would preclude
10 | further pursuit and consummation of the transaction? Or maybe
11 | we're talking about two different things.

12 | MR. DESPINS: No. No. What I'm saying is that they
13 | agree that the Court has the power to enforce the stay and to
14 | interpret that.

15 | The next issue is, how you should interpret that
16 | Order is a different issue. I disagree that because this was
17 | pending, that shows that they never intended that that be
18 | covered. That's pure speculation. There's no discussion of
19 | that anywhere in the record, so I don't see how that could be.

20 | But in any event, Your Honor, I want to finish on
21 | this. The First Circuit in the *PREPA* case did not hold that
22 | 305 beats any other provisions of the Bankruptcy Code. They
23 | found an exit ramp by saying, hey, they didn't confront that
24 | hard issue by saying, wait a minute, the Court isn't being
25 | asked to do that. The Court is being authorized to go to

1 another court -- I'm not arguing the merits of that. I'm
2 arguing the cases that they cite. *Detroit* and *Stockton* on
3 these issues correctly held -- they just refer to them, and
4 they say they take an expansive view. But there's no such
5 ruling by the First Circuit on that issue.

6 And therefore, Your Honor, we believe that this is
7 not covered by 303, not covered by 305, and that's why the
8 Court should grant our motion.

9 THE COURT: Thank you.

10 MR. FRIEDMAN: Good morning, Your Honor. Peter
11 Friedman from O'Melveny & Myers --

12 THE COURT: Good morning.

13 MR. FRIEDMAN: -- on behalf of AAFAF and GDB. I
14 think the tell was the first word out of the Committee's mouth
15 that the creditors are getting all the assets of the company.
16 There's not a company here. There's a government entity here,
17 regulated and controlled by another government entity. I
18 think that gets to the critical issue of 303.

19 The Committee's papers basically say that the GDB
20 Restructuring Act has no impact on provision of services or
21 other governmental functions to the people of Puerto Rico, nor
22 does it have an impact on the organization and operation of
23 government because GDB has ceased banking operations. Could
24 not be more wrong, Your Honor.

25 If you look at the GDB Restructuring Act amendments,

1 statement of motives, in particular it says, "the hurricane
2 Maria altered the fiscal and economic situation of Puerto
3 Rico -- government of Puerto Rico, its public corporations,
4 instrumentalities and municipalities."

5 The new agreement will provide significant financial
6 relief to municipalities. This will result in a significant
7 reduction in municipalities' debts and will provide cash flow
8 relief to municipalities in the short term.

9 The fourth amendment to the GDB Restructuring Act
10 emphasizes this with respect to the CAE settle -- the Excess
11 CAE payments to municipalities. It emphasized this by
12 reamortization schedules to municipalities.

13 And the reason we know that that's a public policy
14 matter, Your Honor, is, well, what's the alternative? Imagine
15 that municipalities aren't getting relief through this
16 mechanism. There are three possibilities: One is
17 unthinkable, which is nobody picks up the tab for
18 municipalities and municipal services just go to waste.
19 That's unthinkable.

20 The second is the Commonwealth has to increase
21 appropriations to municipalities. With the Oversight Board's
22 permission, I guess that would be possible. Or the third is
23 the Commonwealth just has to increase direct service
24 provisions that municipalities can't afford because they're
25 all in contagion -- of Title III. All of those are to be

1 avoided, and all of those are part of what the GDB
2 Restructuring Act and the Title VI are designed to avoid.
3 That is the epitome of a Title III -- of what's protected
4 under Title -- 303.

5 *Stockton* is just -- it's not even apples and oranges.
6 I think I've said it before, it's like pineapples and
7 concrete. It's a situation where you're talking about no
8 balancing of public policy, no legitimate public policy goals,
9 no protecting municipal services.

10 The Court was really clear what's going on there.
11 There's one individual entity, Your Honor, that's being
12 preferred among all others for a private profit-making goal.
13 That's just simply not what's going on here. And by the way,
14 all of these salutary municipal benefits are being done in
15 concert with overwhelming support from GDB's actual creditors
16 that have real life claims and lent three plus billions of
17 dollars to GDB.

18 And, Your Honor, I think the other component to 303
19 that really works together to emphasize, because remember the
20 GDB Restructuring Act, the GDB restructuring is consistent
21 with the fiscal plan of the Commonwealth. What's leading to
22 303? It talks about subject to Titles I and II, knowingly
23 submits the other power of the Commonwealth to regulate
24 itself.

25 And what did Titles I and II talk about? Fiscal

1 plans and compliance with fiscal plans, and how the
2 Commonwealth and its sovereign entity and each of the debtors
3 have to comply with the fiscal plans.

4 I think the link to those two makes very clear, at
5 least to me, that Title III can't restrict compliance with a
6 fiscal plan by a Commonwealth entity, whether through
7 legislation or through entry into various agreements.

8 Your Honor, the -- and I think for those very
9 reasons, this is also -- this also falls within 362. I don't
10 have it right offhand. I believe in an ERS briefing, we've
11 articulated why a legislative act or a town's municipal
12 ordinance -- ordinance can also qualify as an action that is
13 protected.

14 THE COURT: It falls into 362(B)(4) is what you --

15 MR. FRIEDMAN: Yes. Yes. And I think, you know,
16 this is -- whether it's an exercise of police power or whether
17 it's an exercise of necessary provisioning of assets to
18 municipalities, you know, which is not really severable from
19 the remainder of the transaction, I think that is -- you know,
20 would clearly fall in the police power.

21 And we'd cite to *Faitoute Iron and Steel*. You know,
22 it's classic police powers providing -- just making sure that
23 various instrumentalities have their assets.

24 THE COURT: So you accept the proposition that but
25 for 303, 362(B)(4), 304(I), 362 is written broadly enough to

1 be applicable here, and so you need to be exempted or
2 protected from the operation of 362?

3 MR. FRIEDMAN: So I don't, and I defer to
4 Mr. Bienenstock who articulated those points better than we
5 did. I do think, though, that in my view, 305 -- I mean,
6 imagine 305, because I think 305 is an extraordinarily
7 powerful non-interference provision. And I would add that to
8 the protections you discussed.

9 In my view, under 305, the Commonwealth repealed the
10 GDB Moratorium Act and went in and tried to get money out of
11 GDB. It could either repay GDB's -- it could use that cash to
12 repay debts owed to -- that the Commonwealth owes GDB; it
13 could use that cash free from Court interference; or it could
14 add that money to its budget, and again, with the assent of
15 the Oversight Board, just appropriate it to municipalities.

16 And if it can do that, how can this violate the
17 automatic stay? If it's protected from doing that under 305,
18 I don't see how this transaction is any different.

19 As 305 also says, this is, I think, consistent with
20 what you were saying, you know, if the -- you know, you don't
21 have to get approval of a 9019, which is not a stay issue.
22 It's an ordinary course issue.

23 One of the *Stockton* cases, I think it's *Stockton*
24 four, says, you don't need approval for a settlement. So if
25 what the Commonwealth is doing here, and what HTA is doing and

1 | what PREPA is doing and ERS is doing is settling with GDB,
2 | that's not something that requires Court approval.

3 | In some ways, I was heartened to hear Mr. Despina say
4 | that the board of ERS and the board of every other entity
5 | would have had to approve this on behalf of the debtors. I
6 | think that's a great idea.

7 | I don't know that Mr. Bienenstock would agree that
8 | the board of each one of those debtors is required to consent
9 | to a settlement rather than the Oversight Board, both as
10 | debtors' representative and as the gatekeeper under 305 to the
11 | issues in which this Court is permitted to hear matters
12 | relating to the debtors' property --

13 | THE COURT: Doesn't the legislation disable
14 | instrumentalities and municipalities from contesting it, which
15 | seems to me would obviate even the opportunity for --

16 | MR. FRIEDMAN: Yes, Your Honor.

17 | THE COURT: -- disapproval --

18 | MR. FRIEDMAN: Yes, Your Honor. In our mind, it's a
19 | completely appropriate exercise of the Commonwealth's
20 | sovereign power over its instrumentalities. And as this Court
21 | has said, there certainly would have been a process under 204.

22 | To the extent that there was an issue with whether
23 | any of that legislation was inconsistent with a fiscal plan,
24 | we would have had to score it; and the Oversight Board would
25 | have had to say, sorry, you can't do that; and we would have

1 had to have a back and forth.

2 The Oversight Board didn't exercise a power to say,
3 this is inconsistent with anybody's fiscal plan, and nor -- so
4 I think those are, to me, the most important points to make.

5 I do think 304 immunizes certainly the Title VI
6 provisions and the Title VI proceeding, because the debtors
7 can consent to it. You know, I agree that that doesn't
8 immunize the legislation, but I think the legislation is
9 immunized for a variety of additional reasons.

10 And again, I think Mr. Bienenstock is going to get
11 into a variety of other facts and legal arguments. I will
12 reserve for, if necessary, a later time, further discussion of
13 releases and why overall this is actually an excellent
14 transaction from everybody's perspective, because I actually
15 don't think that's relevant to the issue of the stay.

16 But, you know, we have also heard some of the things
17 I think that the Court has expressed some concern about, and
18 we'll be working with Mr. Bienenstock and the Oversight Board
19 to clarify the scope of releases to ensure that, you know,
20 they're appropriate.

21 THE COURT: Thank you, Mr. Friedman.

22 MR. FRIEDMAN: Thank you.

23 MR. BIENENSTOCK: Thank you, Your Honor. Martin
24 Bienenstock from Proskauer Rose, LLP, for the Oversight
25 Board.

1 THE COURT: Good afternoon.

2 MR. BIENENSTOCK: Good afternoon.

3 Your Honor, the General Creditors' Committee, which
4 we've all labeled the UCC, and the Retirees' Committee, have
5 certain constituencies. The constituency of the UCC includes
6 vendors, has unions on it, so union claims. The Retirees'
7 have clearly the retirees as their constituency.

8 And the Commonwealth has been paying vendor claims,
9 pre-petition vendor claims throughout the case. The
10 Commonwealth has been paying the retirees. Strange, we
11 haven't heard a peep from either committee about all these
12 stay violations going on all the time that benefit their
13 constituency.

14 How can that be that suddenly they had an epiphany
15 that not a payment but a future setoff to occur
16 contemporaneously with the Title VI approval suddenly
17 constitutes a stay violation when outright payments haven't
18 caused them to raise the same red flag in -- since these cases
19 have started.

20 And I think the answer is there are two answers: One
21 is we're not talking about stay violations in the context of
22 Title III. And the second is while they call this a stay
23 enforcement motion, I call it the UCC's motion to be Governor
24 for a term. I was going to say Governor for a day, but they
25 would need more than a day.

1 They want to be Governor for a term, or they want to
2 be Oversight Board for a term. And why do they want that?
3 Because they have a different business judgment as to how to
4 treat the assets and liabilities of GDB than the Oversight
5 Board and the Governor does. And they would like to impose
6 their business judgment.

7 And we respect their thoughts and where they're
8 coming from, and perhaps it's something reasonable people
9 could differ on, although we think ours is far more
10 reasonable. But essentially they're trying to find a way
11 through technicalities in Section 362 -- and I'll explain in a
12 moment why it's a technicality -- why they suddenly have an in
13 to become Oversight Board for a term, so they can change the
14 business judgment of the Title VI GDB deal.

15 In the -- going to the technicality issue, in Chapter
16 11, the reason why setoffs are stayed, setoffs against demand
17 deposits, are so that debtors can use the cash subject to
18 adequate protection and don't have to go out and borrow. And
19 at the end of the day, because the setoff right creates a
20 secured claim, the debtor has to pay the secured claim in full
21 with interest; but during the case, the stay against setoffs
22 freezes the cash in place so they can use it subject to
23 adequate protection. It doesn't mean -- it doesn't translate
24 a deficit position, as these Title III debtors have, into a
25 positive position.

1 So our pleadings explain why in the case of each of
2 the debtors, including ERS, PREPA, Commonwealth, HTA, they're
3 in a negative position versus GDB. They're not in a positive
4 position. And since GDB doesn't need cash to operate
5 day-to-day because it has other cash, the notion that the stay
6 against setoffs in Chapter 11 should be used here, it is a
7 technicality.

8 But I would say what I'm not saying is technically
9 they're right, there's a stay violation, but since there's no
10 monetary impact, the Court should disregard it. What I'm
11 saying is at best, under their theories, they have a technical
12 stay violation.

13 Under our view, in Chapter Nine and Title III, where
14 the debtor, because of the absence of Section 363, because we
15 are allowed to use our cash as part of the government's powers
16 of governing and political powers protected by Section 303,
17 because we are allowed to do those things, we don't even have
18 a technical stay violation here.

19 As we explained in our pleading, under their theory,
20 if someone buys electricity from PREPA, they're violating the
21 stay because they're exercising control over PREPA's property,
22 the electricity, and they're paying money for it, but they
23 disregard the payment.

24 With or without the GDB Restructuring Act, Your
25 Honor, these are transactions that the Board and the

1 government want to do. One of the many unique things I've
2 learned in Puerto Rico laws, and I'm by no means an expert on
3 them, but one thing I've observed is they love to have laws
4 that micromanage.

5 Take this revenue, put it in a general account, pay
6 certain expenses, move it to another account, then move it to
7 another account, then pay some more expenses, then pay the
8 debt. They love to have micromanagement, and that's what
9 they've done here. Take this debt and offset it against that
10 loan.

11 Okay. We would do that without the statute. That's
12 why this is not a stay violation. These are commercial
13 transactions that, because it's GDB and it's not in Title III,
14 the Governor wants to do. But on the counter-party side, the
15 Title III debtors, the Oversight Board wants to do these
16 transactions for the reasons I explained earlier. Namely, we
17 see ourselves in a net deficit position, the Title III debtors
18 against GDB.

19 So we don't see it as giving up value. We see it as
20 protecting what will happen to our liability side. They've
21 protected against bringing down HTA by suing on the loan,
22 giving the bondholders the power to do that. AAFAF will be in
23 control of that and the like. And these are business
24 judgments. These are the judgments that the UCC and perhaps
25 the Retirees' Committee would make differently if they could.

1 But this is not a case, especially in Title III, where the
2 Court can effectively make them trustee to make the
3 judgments, or make them Governor, or make them the Oversight
4 Board.

5 Now, I would -- I want to emphasize the threshold
6 issue. Do they have standing to raise this in the first
7 place? And I think looking at their own authorities, it's
8 clear that they don't.

9 So let's look at *Indian Motorcycle Company* that they
10 cite from the Bankruptcy Court in Massachusetts. They cite it
11 for the authority that a creditor could raise a stay violation
12 and get relief.

13 Now, what actually happened in *Indian Motorcycle*?
14 What happened was for good or for bad, and it's a very
15 complicated position, but somehow it ended up that there was a
16 federal receivership in the District of Colorado, and there
17 was a bankruptcy in the Bankruptcy Court of Massachusetts, and
18 the two were vying over who's controlling the money and who
19 does it go to pay.

20 And the IRS was a big creditor of the debtor in
21 Massachusetts. So after a lot of litigation, and the Tenth
22 Circuit ruling that the money was really money of the debtor,
23 a certain money they were arguing about and needed to be in
24 the Massachusetts bankruptcy estate, and the tax, the federal
25 tax needed to be determined under Bankruptcy Code 505 in the

1 Bankruptcy Court case, somehow it happened that the receiver
2 in Colorado was taking discovery of the IRS as if its tax
3 liability was going to be decided in the District of Colorado.
4 And when this was brought to the attention of the Bankruptcy
5 Court in Massachusetts, the Court said, oh, my gosh, the Tenth
6 Circuit has told me I have exclusive jurisdiction over this.
7 I have to carry out what the Tenth Circuit said. The money
8 has to be here, and I have to decide the tax, so stop
9 litigating this issue in Colorado.

10 Now, they say that that's an example of a creditor
11 having standing to raise a stay violation. Actually, they're
12 correct, the creditor raised it, but when you read the
13 decision, the Court was acting *sua sponte*. The Court was
14 saying, to protect my exclusive jurisdiction over the tax
15 liability and the money that the Tenth Circuit told me I have,
16 I have to issue this Order.

17 Now, if they have to reach to a case like that to
18 show standing, I think that demonstrates what the First
19 Circuit has said, is we can't find a case where a creditor was
20 allowed to assert a stay violation.

21 I've run out of time. So unless the Court has
22 questions, I'm finished.

23 THE COURT: Give me just one moment. Thank you.

24 MR. BIENENSTOCK: Thank you, Your Honor.

25 MR. DESPINS: Let me pick up quickly where

1 Mr. Bienenstock left off. The *Indian Motorcycle* case is just
2 one case. It cites itself, this is on page 11 of the
3 decision, six other decisions that stand for the proposition.

4 Basically, the Court says, you know, the question is
5 can the creditor raise a violation of the stay. The courts
6 have answered that question clearly. The automatic stay is
7 intended to both provide debtors breathing space from the
8 creditors and prevent unfair distribution of assets among
9 creditors. And then they cite to six other decisions, or five
10 other decisions.

11 THE COURT: So is it your representation that those
12 five other decisions stand for the principle that creditors
13 are granted standing as opposed to the principle that the
14 automatic stay has effects that are salutary with respect to
15 both the debtor and debtor's creditors, which I think nobody
16 here would dispute?

17 MR. DESPINS: I think they stand for both
18 propositions, but let's assume they don't. Your Honor, the
19 first rule that we find standing to intervene in an adversary
20 proceeding -- it would be bizarre if we could not be heard on
21 the issue of violation of the stay, because we have the right
22 to be heard on any issue in the case.

23 THE COURT: But the First Circuit didn't hold that,
24 at least not directly, that you have through -- via 1109 the
25 right to initiate claims or causes of action.

1 MR. DESPINS: No, but we're not initiating. We're
2 asking the Court to enforce the automatic stay imposed by
3 Congress.

4 THE COURT: You're initiating a request. But we
5 could dance on the head of that pin for a while.

6 MR. DESPINS: But I think it's important to remember,
7 Your Honor, this is an entity in liquidation. This is all
8 about who's getting what out of that pie. It's purely a
9 financial transaction.

10 There are no -- I know the statute says all these
11 beautiful things, but I hope you know these statutes are
12 drafted by lawyers that, you know -- so when they say, for
13 example, this provision is saying that none of the debtors
14 have standing to raise this issue, I would -- you know, let's
15 not speculate where that came from.

16 But maybe next time they want to say the Creditors'
17 Committee cannot appear in court to fight the issue. The
18 point is these statutes are drafted with an angle, and there's
19 a spin on it. And obviously that's what they did in the
20 statutes.

21 And the statement of motive, they say we're doing
22 this -- basically, it's not as if they were writing Section
23 303 in that statement of motive, Your Honor. So we can't be
24 -- the Court cannot be bound by that.

25 Mr. Bienenstock raises the issue of, we can pay

1 vendor claims and all that. That's not the point, Your Honor.
2 What's happening is that there's a global discharge being
3 given to this entity through a statute. The discharge,
4 basically it's Section 702 of the GDB Act, it says that the
5 debtors -- any claims against this entity is limited to this
6 net amount. That's it. All of the other claims are
7 disallowed.

8 And that is in the nature of a bankruptcy discharge
9 and a bankruptcy statute. And it doesn't apply only to Title
10 III debtors. Even though I don't have standing, to be clear,
11 to raise those other entities -- this applies to about 30
12 other entities. And the reason why the automatic stay is not
13 only technical -- Mr. Bienenstock says, hey, we know that we
14 are -- that the GDB is owed more money than it owes. Wait a
15 minute. What analysis has been done of that?

16 He said, for example, in his papers that PREPA has
17 received a preference under the GDB statute, because GDB was
18 insolvent, would receive the money. Well, let's talk about
19 that for a second.

20 If that's the case, these payments were made in 2014,
21 2015, Your Honor, and you know that in the statute that
22 creates GDB, it is a felony for officers of GDB to receive
23 deposits while they're insolvent. So they're all over the
24 place. Meaning they're so intent on pushing the restructuring
25 through, they're hopelessly conflicted.

1 How can they put themselves in the position of a
2 judge to say there's a preference action? They obviously
3 haven't thought of all the consequences of that.

4 The point is that they're on both sides of the
5 transaction. That's why there has to be a process, because if
6 they move to lift the stay, there would be an issue about the
7 claims of GDB against the Commonwealth, would they be allowed,
8 because you can't set off a claim that's disallowed. That's
9 why there's a court process to do this. And that's what the
10 Court should do in this case, Your Honor.

11 THE COURT: And so the Court should review or permit
12 you to review at every level of detail the business premises
13 of the judgments entered into by the Board, which was created
14 and structured by Congress to represent the debtor and the
15 various instrumentalities?

16 MR. DESPINS: That's a loaded question, you see, in
17 every degree of detail. No, but when they're conflicted like
18 this, there's no way of getting around this. This is like
19 COFINA.

20 THE COURT: This is a structural problem, like COFINA
21 --

22 MR. DESPINS: Yes.

23 THE COURT: This is the place where Congress put
24 them.

25 MR. DESPINS: Correct. But by the way, judges

1 appoint Chapter 11 Trustees in multiple debtor cases all the
2 time. It doesn't mean that a judge is saying, oh, by the way,
3 you can steal from one debtor and give it to the other. Of
4 course not.

5 So the fact they've been appointed for all of these
6 doesn't absolve them of being in a conflict position. And
7 this case is so blatant. When they say this debtor has some
8 exposure for a preference, of course not thinking of the
9 consequence of that statement --

10 THE COURT: And Congress specifically said I can't
11 appoint examiners; I can't appoint operating trustees.

12 MR. DESPINS: That's true, but --

13 THE COURT: Unlike Chapter 11.

14 MR. DESPINS: We understand that, but that has
15 nothing to do with the issue of whether the automatic stay
16 applies and whether it should be a process before Your Honor.

17 And of course you would be the ultimate decision
18 maker whether the stay should be lifted.

19 Look at the *Sonix* factor. If they moved --

20 THE COURT: So let's talk about that rather than
21 structural conflicts. Let's talk about the automatic stay.

22 MR. DESPINS: Okay.

23 THE COURT: So if you have anything more to talk
24 about in terms of standing or the operation of the automatic
25 stay, I'd invite you to do that.

1 MR. DESPINS: Well, Your Honor, I think we've made it
2 clear that we have standing to raise the automatic stay, so
3 I'm not going to go through that again.

4 I believe the stay is implicated. It's not only a
5 technical violation. If the stay were applied, there would be
6 a process before this Court to determine whether the claim of
7 GDB -- by the way, it's a filed claim in this case which
8 triggers the claims allowance process, whether that claim
9 should be disallowed or not, and then they can operate the
10 setoff.

11 They cannot, through this whole bankruptcy
12 legislation, accomplish that result.

13 Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Despins.

15 And thank you all for these arguments. I will take
16 this motion under advisement, and decide it as promptly as
17 possible and issue a written decision on it.

18 So the remaining items that had been on the agenda
19 are adjourned to future Omnis. Is there anything else that we
20 need to address together this afternoon?

21 Seeing no hands and having no notes from New York, I
22 will say that this concludes today's agenda. The next
23 scheduled hearing date is October 3rd, 2018, in New York for
24 the GDB standing hearing. And the usual video connection will
25 be available here in San Juan.

1 I thank the court staff in Puerto Rico, in Boston and
2 in New York for their work in preparing for and conducting
3 today's hearing, and for their superb ongoing support of the
4 administration of these very complex cases.

5 Keep well, everyone, and safe travels to all. We are
6 adjourned.

7 (At 12:24 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 100 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain on July 25,
8 2018.

9

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11 S/ Amy Walker

12 Amy Walker, CSR 3799

13 Official Court Reporter

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